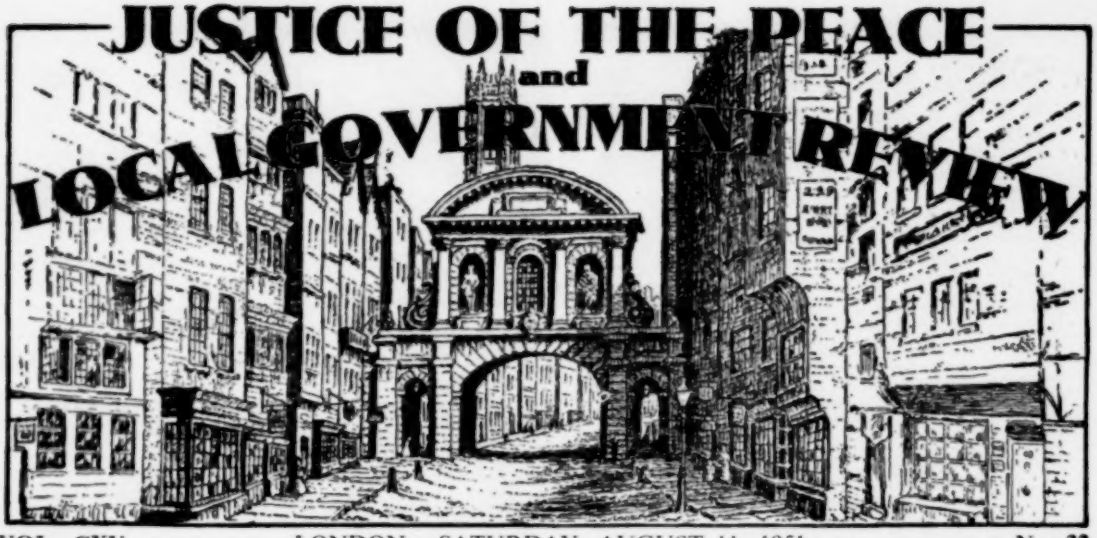

VOL. CXV. LONDON: SATURDAY, AUGUST 11, 1951. No. 32

CONTENTS

	PAGE
NOTES OF THE WEEK	495
ARTICLES:	
Foreign Marriages: Jurisdiction in Matrimonial Causes	498
Time to pay	499
The Lawfulness of Repairing Ships	500
The Committeeman's Tenure of Office	501
WEEKLY NOTES OF CASES	502
MISCELLANEOUS INFORMATION	503
NEW COMMISSIONS	503
LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS	504
REVIEWS	505
CORRESPONDENCE	506
THE WEEK IN PARLIAMENT	506
PARLIAMENTARY INTELLIGENCE	506
PERSONALIA	506
PRACTICAL POINTS	507

REPORTS

Court of Criminal Appeal
Rex v. *Gunewardene*—Criminal Law—Evidence—Admissibility . . 417
King's Bench Division
Pentecost and Another v. *London District Auditor and Another*—Local Government—Audit—District auditor 421
Rex v. *Judge Pugh. Ex parte Graham*—Rent Control—Proceedings before rent tribunal—Subsequent application to county court for apportionment of rent 425
Probate, Divorce and Admiralty Division
Harrison v. *Harrison*—Divorce—Custody—Child born before marriage—Not legitimated per subsequens matrimonium 428
King's Bench Division
Willcock v. *Muckle*—National Registration—Indentity card—Refusal to produce—Duty of police 431

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt 10 a.m. Thursday*

Published by JUSTICE OF THE PEACE LTD., Little London, Chichester, Sussex.
Telephone: CHICHESTER 3637 (P.B.E.) *Telegraphic Address*: JUSLOCGOV, CHICHESTER

SITUATIONS VACANT

EAST Kent Coast solicitors require litigation/common law clerk. State age, experience, salary required. Box No. B44, Office of this paper.

INQUIRIES

YORKSHIRE DETECTIVE BUREAU (Hoylands), **Ex-Detective Sergeant.** Member of B.D.A. and F.B.D. DIVORCE—CONFIDENTIAL ENQUIRIES, ETC., anywhere. Over 400 agents in all parts of the U.K. and abroad. 1, Mayo Road, Bradford. Tel. 26823, day or night.

PARKINSON & CO., East Boldon, Co. Durham. Private and Commercial Investigators. Instructions accepted from Solicitors only. Tel.: Boldon 7301. Available day and night.

COUNTY BOROUGH OF WALSALL

Conveyancing Assistant

APPLICATIONS are invited for the above appointment from persons either admitted or unadmitted. Salary in accordance with Grades V–VII of the A.P.T. Division of the National Charter (£570–£760). The commencing and ultimate salaries will be fixed according to the age, qualifications and experience of the successful candidate.

Municipal experience is not essential.

Applicants must be able to deal with Conveyancing, Agreement and Contract matters with a minimum of supervision.

The Corporation own more than half the area of the borough. There are some 1,300 titles in the Town Clerk's Strong Room, and the annual Rent Roll (apart from Council houses) is £60,000.

The post is superannuable, and the provisions of the Local Government Superannuation Act, 1937, will apply thereto. A medical examination will be required. The appointment will be determinable by one month's notice on either side.

Applications—giving full particulars and accompanied by not more than three recent testimonials—must reach the undersigned not later than first post on Monday, September 10, 1951. No form of application is issued. Any relationship with Members of the Council should be disclosed in the application.

Canvassing in any form is prohibited and will disqualify.

W. STALEY BROOKES,
Town Clerk.

The Council House,
Walsall.
August 8, 1951.

COUNTY OF BUCKINGHAM

Petty Sessional Division of Aylesbury

Appointment of Assistant to the Clerk to the Justices

APPLICATIONS are invited for the appointment of a whole-time Male Assistant to the Clerk to the Justices.

Applicants should have considerable general magisterial experience, be competent typists, be capable of taking a court, issuing processes, taking depositions and keeping the Justices' Clerk's accounts.

The salary, based on A.P.T. Grade V, will commence at £570 per annum rising by annual increments, subject to satisfactory service, to £620 per annum. The appointment will be terminable by three months' notice on either side.

Applications, stating age, present position, qualifications and experience, together with copies of not more than three recent testimonials, should be sent to the Clerk to the Justices, 16 Bourbon Street, Aylesbury, Bucks, by Saturday, August 25, 1951.

J. O. JONES,
Clerk to the Justices.

16 Bourbon Street,
Aylesbury,
Bucks.

METROPOLITAN BOROUGH OF STEPNEY

Assistant Solicitor—Town Clerk's Department

APPLICATIONS are invited for the above appointment which is graded in A.P.T. IX of the National Scheme of Conditions of Service (Salary £790—£910 per annum plus appropriate London Weighting Allowance—£30 p.a. for 26 years of age and over).

Applicants must be admitted solicitors and have had a wide experience of advocacy; Local Government administration; High Court litigation; and conveyancing.

The appointment will be subject to the above National Scheme as adopted by the Council and applied to its staff, and to the provisions of the Stepney Borough Council (Superannuation) Acts, 1905–31, and to the Council's Byelaws and Standing Orders.

Applications on the form provided, which is obtainable from the undersigned, should be returned by not later than 12 noon on Saturday, September 1, 1951.

Canvassing, directly or indirectly, will disqualify.

J. E. ARNOLD JAMES,
Town Clerk.

Municipal Offices,
The London Fruit Exchange,
Duval Street, E.1.
July, 31, 1951.

BOROUGH OF OLDBURY

Deputy Town Clerk

APPLICATIONS are invited for this appointment from solicitors with experience in the Local Government Service. The salary will be according to Grade A.P.T. X. of the National Salary Scales (£870—£1,000). The appointment will be subject to the National Conditions of Service, will be superannuable and subject to medical examination.

Further particulars and conditions of appointment, together with form of application, may be obtained from the undersigned, to whom applications must be delivered by August 20, 1951.

ARTHUR CULWICK,
Town Clerk.

Municipal Buildings,
Oldbury.

CITY OF LEICESTER

Magistrates' Clerk's Office

APPLICATIONS are invited for the appointment of a Senior Clerical Assistant. Previous experience in the office of a Magistrates' Clerk is essential and the person appointed will be required to have a good knowledge of all branches of the work. He must in particular be capable of dealing with the issue of process and interviewing and advising members of the public and he will be required to undertake such other general duties as may be assigned to him from time to time.

The salary will be in accordance with the National Scale (Clerical Grade) rising to a maximum of £490. The post is pensionable.

Applications, giving particulars of age, education and experience, together with testimonials should reach the undersigned not later than August 24, 1851.

W. E. BLAKE CARN,
Clerk to the Justices.

Town Hall,
Leicester.

BOROUGH OF BECKENHAM

Appointment of Legal Assistant

APPLICATIONS are invited for the appointment of Legal Assistant in the Town Clerk's Department at a salary on A.P.T. Grades III–IV of the National Joint Council Scales (£500—£575 per annum)—according to experience and qualifications—plus London Weighting allowance (£20 at age 21–25; £30 at age 26 years and over). Candidates must have had general experience in legal work preferably in the Clerk's Department of a Local Authority. Knowledge of Town and Country Planning law and administration and experience in preparation of works contracts will be an advantage.

The successful candidate will be required to pass a medical examination as stipulated by the Council and to contribute to the Superannuation Fund.

Applications, giving all sufficient particulars and three references, to be delivered to the undersigned not later than August 31, 1951.

Canvassing in any form will disqualify.

C. ERIC STADDON,
Town Clerk.

Town Hall,
Beckenham, Kent.
July 31, 1951.

Justice of the Peace
and
Local Government Review

[ESTABLISHED 1837.]

VOL. CXV. No. 32.
Pages 495-510

LONDON : SATURDAY, AUGUST 11, 1951

Offices : LITTLE LONDON, CHICHESTER, SUSSEX.

[Registered at the General Post Office as a Newspaper.]

Price 2s. 3d. (including Reports)
Price 1s. 3d. (without Reports)

NOTES of the WEEK

Fining the Public

The apparent futility of imposing a fine upon some public body which will pay any penalty out of public funds has sometimes been the subject of comment. If the money comes out of rates or taxes or both it is the general public who have in the end to foot the bill.

Here is a recent example.

Recently the Middlesbrough Stipendiary Magistrate (Mr. A. P. Peaker) was hearing a case in which the Road Haulage Executive of the British Transport Commission was summoned for permitting the accessories of one of its lorries to be inefficient.

The learned magistrate said that fining a nationalized industry did not seem to be hitting at anybody, and continued : " One of the troubles applying to all these corporations we have got nowadays is that no fine seems to serve any purpose at all." If he was able to fine an individual who was responsible—a local manager or a man responsible for maintenance—it would be a black mark against him and serve its purpose.

Any penalty imposed, however, was paid by the taxpayers and was hitting at no-one.

The learned clerk observed that the fines he collected he paid back to the Treasury.

There was some argument as to whether the summons should have been served on the Road Haulage Executive or the British Transport Commission. Mr. Peaker said the Road Haulage Executive was a body to which the British Transport Commission had delegated powers but which had no assets of its own. The point was whether a body of men could be properly summoned who had no assets of their own. It seemed that he could deal only with an individual or a body corporate such as the Commission. In the result, the magistrate dismissed the summons against the Executive as they could not imagine that the driver, whose lorry was stated to have been involved in a collision after a broken door handle had become jammed in the footbrake, would keep the handle in such a place that it might fall into the mechanism. It was not as if it was the brake itself that was to blame. Mr. Peaker described it as an unfortunate accident which neither the driver nor anyone else anticipated. The driver was fined 5*s.* with £2 12*s.* 6*d.*, costs for having inefficient lorry accessories. A charge of dangerous driving against him was dismissed.

So far as the Road Haulage Executive is concerned it all looks rather futile, and one may well ask whether there is any justification for such prosecutions. The taxpayer may say that he has no particular objection to the taking of money from his pocket and the putting back of the same money into his other pocket, but he might add that he supposed that a prosecution involves expenditure of public money on the proceedings, both in respect of the prosecution and in respect of the defence—money which is not returned to him but paid, quite properly, to those engaged as advocates or as witnesses. This, he might say, is wasting the time of the persons concerned, and is indirectly wasting money.

Perhaps the excuse for taking action is that it is sought to bring to the notice of the general public the fact that such acts or omissions as are in question are offences against the law and are visited with fines which, in the case of individuals, they will have to pay as individuals.

Courts and Courtesy

A correspondent, clerk to the justices in a southern town, finds himself faced with a new version of an old trouble. Two of the newspaper reporters in regular attendance at his court refused to stand, in the ordinary way, upon the entry of the magistrates. This, according to themselves, is a matter of principle—if put to it, they would probably say " democratic " principle. The clerk has felt himself obliged to consider what can happen next—with no very satisfactory result. Macaulay has put on record what, essentially, was a similar trouble in the seventeenth century, when Puritans and notably the Quakers refused to uncover in the presence of the King or his representatives. Between the wars, English travellers, in a country of whose form of government they disapproved, would sometimes show their ill breeding by sitting when the country's national anthem was played, and in England itself there were occasional incidents when persons of the same type found their hats removed by members of a patriotic organization—with some police court sequels. The journalists of whom our correspondent has complained are doubtless looking for overt trouble : nothing, we suspect, would please them better than to be in some way " victimized," so that they are unlikely to accept a compromise which has been suggested, of remaining out of court until the magistrates are seated.

Recent antics (we can think of no better word) performed in the House of Commons in relation to alleged contempts indicate the straits to which persons in a position of authority are in danger of reducing themselves, when they attempt to assert their dignity. In such a matter as standing, or removing hats, the polite person or the person who desires to perpetuate an established habit is at the mercy of the vulgar, and this, even where he has some positive legal rule to fall back on, as distinct from ordinary custom. Courts of summary jurisdiction have no power to exclude a member of the public for bad manners ; exclusion of a member of the public (journalist or other) because he had made it known in advance that he would not pay the ordinary marks of outward respect to the court could not be justified in law,

while the ushers, if required to remove a person who being already in court insisted on remaining seated, would be exposed to proceedings for assault. In this matter a journalist has no greater and no less legal right than any other person, but, if supported by his editor, he is in fact in a stronger position, in as much as the bench and the clerk are an easy mark for ridicule. Probably the best thing the bench and clerk can do is to follow the example of Charles II in similar cases, and ignore the matter. If this is done (so that no martyrs are created) there is a reasonable chance that fellow journalists in the town in question, who presumably have the usual sort of professional organization among themselves, may bring their recalcitrant colleagues back to the paths of ordinary courtesy.

Protests in Court

When a coloured medical man was recently sentenced to imprisonment on charges of procuring miscarriages, another coloured man rose and said he protested in the name of the whole of the civilized world. The newspaper report states that he was accompanied out of the court by a police officer, and that the incident passed unnoticed in the public gallery. It appears that the judge was leaving the court, and that he did not pause.

This way of treating such an incident is undoubtedly most likely to prevent anything in the nature of a scene, and it is as appropriate in a magistrates' court as in a court of assize. As, apparently, the protest was made without disorder, nothing could have been gained by calling the man before the court and admonishing him. He would certainly have replied and tried to justify himself, and he might have become excited and unable to keep within the bounds of propriety. As it was, he could hardly feel he had been treated badly, and the dignity of the court was not affected. The protest fell flat, as observations that are ignored so often do. That is one reason why it is usually best to ignore them. To indulge in any sort of argument or exchanges between magistrates and the man who protests, be he defendant or onlooker, endangers the dignity and good order of the court.

Naturally, threats that appear to be serious may be treated seriously. While vulgar abuse of the bench or the prosecutor are generally ignored, it is by no means improper, and indeed it may be most fitting, to call back into the dock a defendant who, on being sentenced, utters threats which the court considers such as may be meant to be carried out. In such an event the defendant may be ordered to find sureties, as a preventive measure, and not as an aggravation of the punishment imposed for the offence of which he had been convicted.

Pens and Inks

Our New Zealand contemporary *The Honorary Magistrate* recently contained the following: "The New Zealand Law Society has referred to me a request that the co-operation of all Justices of the Peace be sought to ensure that no Land Transfer document is signed with a ball pointed pen.

"Considerable difficulty and delay is experienced by solicitors and their clients in the registration of Land Transfer documents which have been so signed. It is essential, of course, that these documents be signed in ink because they are permanent records. The dye used in ball pointed pens cannot be regarded as permanent.

"I shall be glad if you would be good enough to inform your readers of this request and seek their co-operation."

This raises a question of general importance. According to many people, ink is not of the quality it used to be, quite apart from the popular new type of pen which does not use ordinary fluid ink, and it is said that signatures and other written parts of documents will fade comparatively soon. Those responsible for the preparation or preservation of papers of various kinds, official or unofficial, may well consider the advisability of discriminating between those documents that are of no lasting importance and those which ought to be preserved in legible form for an indefinite period.

Danger from Drunkenness

Everyone recognizes how dangerous is a drunken man who is in charge of a motor car, or who has a firearm in his possession, or who is in a violent and quarrelsome mood. That is obvious enough, but it is not so obvious that a man who is incapably drunk may also be not only a nuisance but also a public danger.

Recently a man appeared before a magistrates' court charged with being drunk, having been arrested because he was incapable. A police officer said this drunken pedestrian was a danger to motorists, several of whom had to pull up very sharply to avoid him.

Serious accidents can be caused when a driver has to swerve suddenly or to stop instantly and unexpectedly to avoid hitting someone. A drunken man, lurching in front of a car, might be the cause of injury to persons or damage to property. If it were only his own safety that he endangered, the result might not be so serious although nobody would wish a drunken man to pay for his folly at the cost of life or limb. It is, however, much worse because of the peril in which he puts members of the general public. He cannot be allowed to say that so long as he is neither violent nor offensive he is doing no harm to anyone but himself. He may be a real menace.

Drivers and Pedestrians

Many of us, when we are driving a car, are inclined to rail at pedestrians for their carelessness which, we say, puts us in a position of difficulty or even of danger. Yet if on the next day we happen to be pedestrians, we are just about as inclined to anathematize motorists for their disregard of the safety and comfort of pedestrians. This is just a little weakness of human nature, and it does not matter much unless it affects our conduct, but if we forget our manners and give way to impatience, unpleasant and possibly serious results may follow.

We venture to quote a fragment from a judgment of the Privy Council in *Nance* v. *British Columbia Electric Railways Co. Ltd.* [1951] 2 All E.R. 448, an appeal arising out of a running-down case. We are not here concerned with the questions of civil liability, negligence and contributory negligence, which were involved. We wish simply to commend to all road-users the observance of a principle stated by Lord Simon: "Generally speaking, when two parties are so moving in relation to one another as to involve risk of collision, each owes to the other a duty to move with due care, and this is true whether they are both in control of vehicles, or both proceeding on foot, or whether one is on foot and the other controlling a moving vehicle . . . When a man steps from the kerb into the roadway, he owes a duty to traffic which is approaching him with risk of collision to exercise due care."

Of course, it is the motorist who is likely to be the more dangerous if he does not exercise proper care, but that does not absolve the pedestrian from his obligations. If all road users, whether on foot or on wheels, would be careful, not only in their own interests, but also in the interests of others, there would be fewer accidents and much less ill-temper. In a sense, road safety depends largely on good manners. As H.R.H. the Duke of Edinburgh said last week, people should learn to drive in the same way as they learned to be good citizens.

Probation in Manchester

We have received the report of the Probation Committee for the City and County Borough of Manchester for the year ending March 31, 1951. It records, *inter alia*, that the expenditure for the Probation Service for the year was £18,504 odd, of which £8,345 was received back by way of government grant. The total expenditure for the preceding year was £14,859 odd. How much of this increase of nearly £4,000 is due to what are coming to be accepted as inevitable rises in the cost of everything and how much to the increased amount of the work we have no means of judging. It is interesting to note, in this connexion, the summary of the wide range of duties of the modern probation officer which is given in the principal probation officer's report, as follows : social inquiries at all criminal courts, including pre-trial inquiries in juvenile court cases ; supervision under s. 3 of the Criminal Justice Act, 1948, ss. 62, 64 and 84 of the Children and Young Persons Act, 1933, and s. 40 of the Education Act, 1944 ; matrimonial and conciliation work ; means inquiry work under the Money Payments (Justices Procedure) Act, 1935, and the Summary Procedure (Domestic Proceedings) Act, 1937 ; after care of those released on borstal licence and of young prisoners and others, also of those released from approved schools when the managers so request ; requests to help parents with children who are beyond control ; preventive cases referred to probation officers by the police and other authorities ; affiliation cases ; guardian *ad litem* duties in adoption cases ; work in connexion with consent to marry cases ; leave inquiries at the homes in borstal and approved school cases ; other applications for help and advice.

We have reproduced this list at length because we think it well to call attention to this wide range of activities which the probation officer is expected to cope with. It is obvious, we think, that such multifarious duties can be done satisfactorily only by carefully selected and adequately trained officers, and if the public wants this work properly done it must be prepared to pay for it.

Probation in Leeds

The most recent report of the probation committee for the city of Leeds covers the period from July 1, 1949, to December 31, 1950. Evidently both the probation committee and the case committee are active, meeting at something like fortnightly intervals, and the principal probation officer expresses warm appreciation of the help and guidance afforded to the probation officers by the case committee. From the statistical tables it would appear that certain officers must have a heavy case load. However, in what is no doubt a district in which probation officers do not spend over much time in travelling it is no doubt possible for them to supervise a larger number of cases than could officers working in an area with a scattered population, involving long journeys. Moreover, with a committee meeting so often and so regularly, it can be taken for granted that the position of case-loads will be carefully watched.

In his report, the principal probation officer Mr. G. W. Appleyard refers to some effects of the coming into force of the Criminal Justice Act, 1948. He thinks one immediate result is a large increase in the number of adult probationers, indeed for the first time there have been more adults (285) than juveniles (266), placed on probation during a twelve month period. In his opinion, the establishment of detention and attendance centres will probably alter the balance once more.

In Leeds, as elsewhere, the question of after-care is becoming of increased importance to the probation service, and already it has had to deal with five men from corrective training and one man from preventive detention, in addition to borstal cases.

Mr. Appleyard has definite views about the employment of probation officers in connexion with persons subject to s. 22 of the Criminal Justice Act. He writes : "The Central After-care Association has, on a few occasions, asked us to check on the addresses submitted to them by persons subject to the provisions of s. 22 of the Criminal Justice Act, 1948. Though we have complied with the request, we feel that this negative type of work should not be one of the duties of a probation officer ; indeed, in some of these investigations we have encountered hostility which, if enlarged, may tend to create an attitude of suspicion towards the probation officer in the district in which he works and perhaps obstruct that flow of confidence between the officer and those whom he is trying to help, which is essential to constructive work."

The need for probation officers to acquire some knowledge of adoption law and procedure is shown by the fact that in Leeds probation officers are being asked to act as guardian *ad litem* in cases where the children's officer is already an interested party. It is estimated that these will amount to some sixty *per annum*.

Litter

"It really is scandalous," said the B.B.C. cricket commentator, and so it was.

It was near close of play, and the crowd of spectators was thinning. As they left, a shower of paper was blown across the field, sufficient to make the commentator think it would be necessary to suspend the game, so embarrassing was it to the players. Newspapers, paper bags, paper of every size and shape fluttered in the wind.

It is unfortunately characteristic of the carelessness and selfishness of many people today. The spectators who were leaving had had their fun, so why bother about the others who were staying a few minutes longer, or indeed about the players? They had read their newspapers and emptied their lunch bags, and were certainly not going to the trouble of taking them home or depositing them in a litter bin.

At this time of year, we can see every day children and adults alike, throwing down in streets, parks and open-air resorts of every kind, ice-cream papers and cups, cartons in great variety and indeed litter of all kinds. All the year round there is much disgusting strewing of greasy paper that has contained the fish and chips so popular with people who prefer ready cooked to home cooked food.

It is difficult to put a stop to this kind of thing. In towns and in places of popular resort in the country, something can be done by the provision of numerous bins and notices, with occasional raids on offenders followed by fines and publicity, but the real remedy is to induce people to show their appreciation of their towns and of the countryside in which they find their recreation by preserving them from ugly untidiness. As usual, we are inclined to say we must begin with the children, and this is a job for their parents. Unfortunately, the parents often set the worst possible example, and so it is again the teacher who is asked to take on the uphill task of making up for the laxity and indifference of parents.

Bos Non Curat Delicatorum

The report of Mr. Scott Henderson's committee on cruelty to wild animals attributes some of the nonsense that is talked about the subject to "growing unfamiliarity of men with animals . . . the internal combustion engine finally ended the close relationship that had previously existed between town

dwellers and animals. It is now unusual for the majority of inhabitants of towns to have any direct contact with animals other than domestic pets." We take it that the same cause produces the townsman's periodical distress when he finds the dung of farm animals upon the highway. The motorist, and still more the urban walker taking exercise along a country road, discovers that the cow is not as careful with natural functions as the cat or as cautious as the house trained dog, and—having by experience come to expect that Parliament will have enacted something about everything—he sends along to us a query, asking what statute can be used to make her mend her manners. Now the cow and horse have just as much right on the ordinary highway as the motor car or the pedestrian biped, and, since it is their established custom to deposit excrement when and where they feel the need to do so as they walk, we have no doubt that the carriageway must be assumed in law to be dedicated to this as much as to any other normal purpose. Where the road is provided with a footway, it can be taken for granted that this is intended for use by men and not by beasts; the beast choosing to walk upon it is a trespasser, committing against the owner of the soil an actionable wrong, for which its owner may be liable in damages. But civil trespass is one thing and criminal offences are another. Section 72 of the Highway Act, 1835, made it an offence wilfully to drive your cow upon the footway alongside the road, but did not impose on the farmer or drover any obligation to prevent her going there, as she is quite likely to do, for reasons good in her own eyes. She may desire to nibble at the hedge or roadside bank, or may dislike finding the carriageway infested with noisy evil smelling engines, swooping towards her on rubber tyres at unnatural speeds. Some few local authorities of suburban areas have made a byelaw under the rubric "good rule and government," requiring that farm animals sent through the streets shall have a drover with them. Such a byelaw is unobjectionable in the sort of area where the road can be aptly styled a "street," but would be an undue interference with the ways of life in country areas, where it is a common practice for the cows to be let out at the appropriate hour, finding their own way across or along a road to their milking shed or pasture. There may be a lad bringing up the rear, and shutting the gate after the last of the animals making that particular journey, by which time the foremost will be a hundred yards away. We do not see any remedy against the cow: the fault lies not in her but in the fastidiousness of those who have thrust urban shoes into her domain.

FOREIGN MARRIAGES: JURISDICTION IN MATRIMONIAL CAUSES

By M. LESLIE KEYES, *Barrister-at-law*

From time to time the magistrates' courts of this country are called upon to hear matrimonial disputes between persons who were married in some foreign country in accordance with the relevant foreign law. In certain circumstances, out of such a situation, difficult jurisdictional problems arise.

Our courts have no jurisdiction to grant remedies in matrimonial causes unless the parties thereto had entered into what is usually termed a "Christian" marriage. This principle was laid down in the case, *inter alia*, of *Hyde* v. *Hyde* (1866) L.R. 1 P. & M. 130. In that case, at p. 133, Lord Penzance defined such a marriage as "the voluntary union for life of one man and one woman to the exclusion of all others." This definition has been consistently approved and followed in later cases.

The English conception of marriage was also defined in the case of *Lindo* v. *Belisario* (1795) 1 Hag. Con. 216. Lord Stowell declared at p. 230 that marriage was a contract according to the law of nature, antecedent to civil institution, and which might take place wherever two persons of different sexes engaged, by mutual consent, to live together.

These two definitions have three things in common: (*a*) They emphasize that the marriage must be entered into voluntarily or by mutual consent. This aspect of the definitions does not call for further comment here. (*b*) They clearly embrace marriages celebrated otherwise than in accordance with the rites and usages of the Christian Church. (*c*) They refer only to monogamous marriages.

Dealing first with the second of the common factors noted above, it will be observed that the term "Christian" marriage, is in fact misleading. The expression is not intended to have any religious significance but is merely used to denote a marriage which conforms to the essential principles of the English conception of marriage. The definition in *Lindo* v. *Belisario*, *supra*, makes this quite clear. In the case of *Brinkley* v. *Attorney-General* (1890) 15 P.D. 76, it was held that a marriage performed in Japan in accordance with Japanese law was to be deemed to be a Christian marriage. Similarly, in *Nachimson* v. *Nachimson* [1930] P. 217, a marriage in Russia in conformity with Russian law was held to be such a marriage.

To fall within the definitions a marriage must be of a monogamous nature. The English courts will not exercise their jurisdiction over a polygamous or potentially polygamous marriage—*re Bethell* (1888) 38 Ch. D. 220. Whether a foreign marriage is monogamous or polygamous is a question of fact to be proved by expert evidence of the relevant foreign law. Great care must be exercised in examining the foreign law because whilst some religions, being recognized by the foreign law, permit a person to have more than one spouse, certain sects within those religions practise monogamy; *e.g.*, the Hindu religion permits a man to have more than one wife whilst the Arya Samaj sect and the Brahma Samaj sect apparently practise monogamy. In the case of such a sect a marriage performed in accordance with its rites will be deemed to be a Christian marriage—*Mehta* v. *Mehta* [1945] 2 All E.R. 690.

Lord Penzance in his definition used the expression "union for life," and this phrase has given rise to some difficulties. By some foreign laws, the party to a marriage, in accordance with such law, may obtain a divorce very easily—either on grounds not recognized by the English law or by consent of the parties or even at the will of one of them. This fact, however, does not preclude a marriage from being a "union for life," and it was so decided in *Nachimson* v. *Nachimson*, *supra*, and *Mehta* v. *Mehta*, *supra*. In deciding whether or not a marriage is a union for life regard must be had to the essence of the contract at its inception and not to its mode of termination.

It must be emphasized that the fact that a marriage falls outside the jurisdiction of the English courts because it does not

comply with the requirements of Christian marriage does not preclude the English courts from recognizing the foreign marriage as valid. In *Srini Vasan* v. *Srini Vasan* [1946] P. 67, and *Baindail* v. *Baindail* [1946] P. 122, it was held that if a man, being domiciled in a country which permitted polygamy, contracted a valid polygamous marriage according to the law of that country, then he had the status of a married man and could not contract a valid marriage subsequently in England.

The jurisdictional difficulties which have been outlined make it important that the magistrates who are called upon to adjudicate in matrimonial causes thoroughly appreciate the necessity for ascertaining the precise nature of the marriage in question.

TIME TO PAY

A question from a reader has prompted us to examine afresh the general question of granting time for payment of sums adjudged to be paid by a conviction.

The Summary Jurisdiction Act, 1848, contains in ss. 19, 20, 21, 22 and 23 provisions for enforcing the payment of such sums by distress, with imprisonment in default of distress, and in appropriate cases by imprisonment without distress.

The Summary Jurisdiction Act, 1879, s. 7, gave authority for allowing time for payment of such a sum, for directing payment of the sum by instalments and contains other provisions with which we are not here concerned. Section 21 of this Act gives general authority, subject to certain requirements, for the issue of a commitment warrant in lieu of a distress warrant where the statute concerned specifies that the sums adjudged shall, in the first instance, be recovered by distress.

With this background we come to the Criminal Justice Administration Act, 1914, s. 1 (1) as follows :

" A warrant committing a person to prison in respect of non-payment of a sum adjudged to be paid by a conviction of a court of summary jurisdiction shall not be issued forthwith unless the court which passed the sentence is satisfied that he is possessed of sufficient means to enable him to pay the sum forthwith, or unless, upon being asked by the court whether he desires that time should be allowed for payment he does not express any such desire, or fails to satisfy the court that he has a fixed abode, or unless the court for any other special reason expressly directs that no time shall be allowed."

We do not propose to enter here upon any discussion of the possibly vexed question of what constitutes " special reasons " within the meaning of this subsection. So far as we are aware no High Court decision has ever been sought on this point.

It will be seen that the subsection contains no prohibition of the issue forthwith of a distress warrant and it is lawful, therefore, without dealing specifically with the question of time for payment, to order the issue forthwith of a distress warrant to recover any sum to which the subsection relates. The court can, if it chooses, issue a distress warrant with no inquiry as to the defendant's means and with no reason to suppose that it will be effective. If the return to the distress warrant is " no goods " a commitment warrant can then be issued and as it cannot be said that this has been issued forthwith there is no contravention of s. 1 (1) of the 1914 Act. It is to be noted, however, that the court has at no time given specific consideration to the question of the ability of the defendant to pay the sum in question, although doubtless it obeyed the requirement of s. 5 of the Act of 1914, in fixing the amount of the fine, to take into consideration the means of the offender so far as they appeared or were known to the court. To what extent they can appear or be known when the case is dealt with in the offender's absence is a matter of conjecture.

We will consider next the relevant provisions of the Money Payments (Justices Procedure) Act, 1935. It can fairly be said, we think, that this was intended to supplement s. 1 (1) of the 1914 Act, and still further to reduce the number of persons committed to prison in default of payment of fines.

Section 1 (1) reads as follows : " Where a court of summary jurisdiction adjudges a person to pay a sum by a conviction and allows time for payment the court shall not on that occasion impose on the defendant a period of imprisonment in default of payment of that sum : Provided that this subsection shall not have effect where the court on that occasion and in the presence of the defendant determines that for special reason, whether having regard to the gravity of the offence, to the character of the defendant or to other special circumstances it is expedient that he should be imprisoned without further inquiry in default of payment."

If advantage is taken of the proviso, the court must state the reason for which it so acts, and must enter that reason in the court register.

We call attention to the fact that subs. (1) applies only where the court allows time for payment. Once again, therefore, the court is left free to say " pay forthwith " and to fix an alternative in default and then to order the issue of a distress warrant. If this is returned " no goods " a commitment warrant on the basis of the alternative already fixed can then be issued.

We cannot say that this is contrary to the letter of the law, but we do feel that it is contrary to its spirit, and in support of this point of view we must now refer to some other provisions of the 1935 Act.

Section 3 requires that where a sum is adjudged by conviction and either the court allows time for payment *or* the defendant is not present on the occasion of the conviction a notice of the amount of the fine and of the date on or before which payment thereof is required must be sent to the person fined. Clearly in the case of an offender who is allowed time for payment the date specified must be one at least seven clear days later than the date of the conviction (1914 Act, s. 1 (2)). In the case of the absent defendant it is lawful, so it is argued, to specify " forthwith," using that word to mean as soon as possible after the receipt of the notice. This must, in effect, give the offender a day or more in which to pay, but by using the word " forthwith " in the notice none of the consequences that flow from allowing time for payment is involved.

In the case of the absent defendant dealt with in this way the court once again can use the distress warrant, followed by commitment if necessary, without any further proceedings in court. We say that the distress warrant must be used because if it is sought to say that payment has been demanded forthwith, then any process which issues because of non-payment must also be said to be issued forthwith, and s. 1 (1) of the 1914 Act, as we have seen, prevents the issue of a commitment warrant forthwith unless its provisions have been complied with. It would be difficult to say, in the case of most absent defendants, that the court was satisfied that they had the means to pay forthwith.

We go back now to s. 1 (3) of the 1935 Act, by which a court is required on an occasion subsequent to that of the conviction *and in his presence* to hold an inquiry into the offender's means,

before issuing a commitment warrant, in every case where time has been allowed for payment. There are exceptions to this requirement if, for reasons permitted by s. 1 (1), the alternative was fixed at the time of conviction *and in the presence of the defendant*, or if the defendant, at the time when committal is ordered, is in prison for some other reason.

We find it difficult to believe, studying these various provisions together, that Parliament intended, after the passing of the 1935 Act, that any defendant should be committed to prison in default of payment of a fine (or sum similarly enforceable) without ever appearing before the court and without the court making any sort of inquiry in his presence as to his means. We see no difficulty in acting on this principle. If the case is one suitable to be dealt with in the defendant's absence it is reasonable to assume that it is not a matter of any gravity and there is no good reason for refusing time for payment. If it is not such a case it should not be dealt with in the defendant's absence, and the court can then deal with the question of time for payment in his presence at the time of conviction. If the defendant does not appear in person but is represented by an advocate the advocate should have the relevant provisions in mind and he can apply for time for payment and can deal with any question put by the court as to his client's means.

We do not know whether the practice of hearing cases in the absence of the defendant and then demanding payment forthwith is widespread. We hope it is not and that it will not be resorted to. A difficulty which arises from it is that even if, thereafter, the court wishes to make inquiry into the defendant's means it has not lawful authority for issuing process to get him before the court for that purpose. The relevant provision is that contained in s. 11 (1) (*a*) of the Act of 1935, which enacts that for the purpose of enabling inquiry to be made in his presence as to the means of a person *who has been allowed time for payment* of a sum adjudged by a conviction to be paid by a court of summary jurisdiction, and who has made default in payment, a summons or (if thought necessary) a warrant may be issued to secure his attendance. If, therefore, no time has been allowed for payment there is no authority for the issue of such process. It is true that to issue a summons might do no harm, but it is certain that it would be unsafe to issue a warrant, and we dislike suggesting that a court should ever issue process for which there is no proper authority.

THE LAWFULNESS OF REPAIRING SHIPS

We spoke at 114 J.P.N. 531 of the contrasted decisions in *Howell* v. *Falmouth Boat Construction, Ltd.* [1950] 1 All E.R. 528, and *Jackson, Stansfield & Son* v. *Butterworth* [1948] 2 All E.R. 558; 112 J.P. 377, where the two halves of the Court of Appeal had reached opposite conclusions, upon two cases which raised the same fundamental point—that you cannot in a civil court recover money agreed to be paid for the doing of something illegal. The text books abound in illustrations of this principle: it may suffice to mention *Eisen* v. *McCabe* (1920) 57 Sc. L.R. 534, a case decided by the House of Lords at the same sort of interval after the first world war, upon the sale of timber without a licence. It is a pity that that decision appears nowhere except in a Scottish series of reports, not widely available in England; an unusally strongly constituted House of Lords was emphatic and unanimous, that the contract was void *ab initio*, for want of the necessary licence, and would not have been validated even had the licence been granted before the time fixed for performance of the contract. In the two recent cases, then, the Court of Appeal had set a puzzle, which we confessed last year we found too difficult for our own intellectual powers—the important point, for us, being that in regard to building work requiring a licence the Court declined to enforce a contract for unlicenced work, though in regard to shipbuilding it had agreed to do so. Lord Normand, delivering the leading speech in the House of Lords in *Howell* v. *Falmouth Boat Construction*, *supra*, has succeeded in finding a way between the two decisions of the Court of Appeal: [1951] 2 All E.R. 278. This is, at any rate, a way rather less difficult to follow than was afforded by the judgments in the Court of Appeal.

Regulation 55 on which the ship-repairing case turns is an omnibus regulation, covering a number of different matters. The marginal note is "General control of industry" and the particular provision with which the House of Lords was concerned was an order made by the Admiralty thereunder. In *Jackson, Stansfield & Son* v. *Butterworth*, *supra*, the regulation before the Court of Appeal was regulation 56A. This is a specific regulation, confined to the "Control of building operations, &c." This is no doubt why reg. 56A is more detailed (as regards the method of control) than reg. 55 which leaves more of the details to be dealt with by subordinate orders. The initial words of the two regulations are worth comparing. Regulation 56A starts by saying that execution of certain scheduled work is to be unlawful, except in so far as it is authorized by the authority named in the schedule. Then paragraph (2) goes further, saying that repair and maintenance work upon the first mentioned work is to be unlawful except in so far as there is *in force* a licence granted by the Minister. The italics are ours, and point to the conclusion that under reg. 56A (2) a licence cannot be retrospective. The next paragraphs of the regulation contain definitions and machinery. Regulation 55, on the other hand, begins by saying that a competent authority may by order provide for regulating the carrying on of any undertaking, and leaves it to the competent authority to impose provisions parallel to those in regulation 56A if it sees fit. The operative provision which the House of Lords had to consider was an order made by the Admiralty under the authority of reg. 55, which prohibited the execution of shipbuilding work without a licence granted by the Admiralty or somebody on their behalf. (Under regulation 56A the parallel provision is in the regulation itself and the licence has to be in force at the time the work is done.) Lord Normand does not seem to have followed the line taken by Denning, L.J., below, who thought that the order made by the Admiralty could have been (and in fact had been) varied in some secret and informal manner. He seems to have preferred the line that the licence when granted conferred validity upon things which had previously been done under the direct personal supervision of the licensing authority—a course which would not be possible under regulation 56A because of the words "in force," which would have rendered the work illegal while being done, even though done under the supervision of the licensing authority. This may not seem very convincing, but it is better than any of the lines suggested in the Court of Appeal.

All the Lords Justices, and Lord Normand in the House of Lords, were evidently impressed by the injustice of depriving a shipbuilding firm of its remuneration upon the technical ground

that what it had been doing was illegal, when it had carried out that work under the personal supervision of the officer who, by putting pen to paper, had power to legalize it at any moment, and had, as appears from the judgment, been visiting the work in progress two or three times a week.

In the House of Lords, as in the Court of Appeal, an effort was made to draw a distinction on merits, between the case of the ship and the case of the building. In the case of the building the customer naturally and properly looks to the builder to make sure that all formalities are in order; if the builder fails to obtain a written licence before starting work, he has only himself to thank. In the shipbuilding case (at least on the facts which were before the House of Lords) the customer (presumably) knew that the firm were working under almost daily supervision by the licensing officer, so that his claim to escape from paying the firm's remuneration, upon the ground that the licence had not been granted in writing, looked too much like sharp practice.

However this may be, it is satisfactory that the House of Lords succeeded in differentiating the cases, in some way which is a little less unsatisfactory than the Court of Appeal had managed to find.

THE COMMITTEEMAN'S TENURE OF OFFICE

By J. M. HAWKSWORTH, LL.M.

Mr. Justice Slade's decision in *Manton* v. *Brighton Corporation* (briefly noted at pp. 321 and 344, *ante*, and now more fully reported at [1951] 2 All E. R. 101) is of exceptional interest to students of local government. Not only does it deal with a point which, for some unaccountable reason, has hitherto been untouched by direct authority; it also throws more general light on the relations between local authorities and their committees.

The point at issue was quite a simple one. The council, as they were entitled to do by their standing orders and by s. 85 of the Local Government Act, 1933, appointed certain standing committees at their annual meeting in May, 1950, "for the period ending with the next annual meeting of the council." The plaintiff, an alderman, was appointed to three of these committees, which enjoyed delegated powers. At the end of March, 1951, however, the council adopted the report of an *ad hoc* committee which had recommended that the plaintiff should no longer serve on any committee, and thereafter treated him as having been removed from the three committees concerned. The plaintiff claimed (*inter alia*) a declaration that the council's action was *ultra vires*, and an injunction restraining them from "interfering with his exercise of his rights and privileges as a member of all the committees of the council to which he had been appointed until his term of office expired."

The learned judge, in giving judgment for the corporation, based his argument to some extent on the decisions in *R.* v. *Sunderland Corporation* (1911) 75 J.P. 365, and *Huth* v. *Clarke* (1890) 55 J.P. 86. It is therefore necessary to consider briefly what those cases decided.

The *Sunderland* case may quickly be disposed of. It merely laid down that a person who has been appointed to serve on a local authority's committee may lawfully resign from it against the will of the council who appointed him. Slade, J., appears to have been mainly interested in the *Sunderland* case because it contained a *dictum* of Lord Alverstone, C.J., which supported his decision that the words "for the ensuing year" in a standing order of the Brighton Corporation meant merely that no appointee should hold office after the end of the ensuing year, and not that an appointee was entitled in all circumstances to continue in office for that period.

In *Huth* v. *Clarke* it was held that lawful delegation by a committee to a sub-committee does not deprive the committee of the powers delegated; the committee may continue to exercise them. The committee concerned was an executive committee of the West Sussex County Council, which by virtue of the Contagious Diseases (Animals) Act, 1878, enjoyed all the powers given to the appointing authority by that Act. The Act also empowered the executive committee to appoint sub-committees and to delegate powers to them. This was done, and the powers delegated included a power to make regulations under the Rabies Order, 1887. What then happened was that the executive committee themselves made regulations under the Rabies Order—the sub-committees not having already done so. The appellant, having been convicted of failing to muzzle a dog, sought to have his conviction quashed on the ground that the executive committee had no power to make the regulation; they had, he argued, disposed of that power in favour of the sub-committees. The court decided, however, that delegation does not imply denudation and that the executive committee's regulation was therefore *intra vires*.

At this point Mr. Justice Slade's judgment may be thought to break new ground, because he expressly holds that a delegating authority may revoke the power which they have delegated. It would be strange indeed if the rule were otherwise. It is also true that this proposition is implicit in the judgments in *Huth* v. *Clarke*, but sch. 6 to the Contagious Diseases (Animals) Act, 1878, contained a specific power of revocation, while no such power is contained in s. 85 of the Local Government Act, 1933; s. 96 of that Act allows local authorities to revoke standing orders, but that is a different matter.

The final step in the *Manton* judgment is best expressed in the learned judge's own words (at pp. 107 and 108): "If there is power to revoke the authority of the committee as a whole, there must be a power to revoke the authority of any single member thereof. . . ."

This convincing and (if one may say so with respect) obviously correct decision conveys two comforting messages to the local government officer: (*a*) That so far as internal administrative arrangements are concerned, a council may always change their mind. [They may, indeed—as Brighton Corporation did—put obstacles in the way of a too speedy *volte face* by passing a standing order making it more difficult to reverse decisions passed within the preceding three months. But such a provision is designed simply to assist in maintaining administrative continuity.] There are at least two good reasons for this situation. First, a committee is a creature of the council and not a legal *persona*. Second, the appointment of a committee does not in itself create any contractual or quasi-contractual obligations between the committee and its members (on the one hand) and the council (on the other hand).

(*b*) That in these matters it is not really necessary to embark on rather barren speculation about the exact nature of the powers which local authorities delegate to their committees, and what (if any) analogy there is between these powers and the powers of an agent at common law, or functions which Ministers of the Crown delegate to local authorities. A resolution of the

council, it seems, is all that is needed to effect any desired re-adjustment of functions or alteration of the persons exercising those functions; provided, needless to say, that the re-adjustment, when complete, is *intra vires*. In the language of Slade, J. (at p. 108): "... there is power to determine, arbitrarily or capriciously (if the appointor so requires), an authority which he has conferred on some other person or persons."

To sum up: the committeeman's tenure of office is just as precarious as the committee's very existence. In both cases, it is at the will of the council.

WEEKLY NOTES OF CASES

KING'S BENCH DIVISION

(Before Lord Goddard, C.J., Hilbery and Ormerod, JJ.)

July 24, 1951

WALTERS *v.* LUNT AND ANOTHER

Criminal Law—Receiving—Child under eight—Property unlawfully acquired by child—Property handed by child to another person—Larceny by bailee or by finding—Larceny Act, 1916 (6 & 7 *Geo.* 5, *c.* 50), *s.* 1 (1), 2 (1) (*d*), *s.* 33 (1)—*Children and Young Persons Act*, 1933 (23 *Geo.* 5, *c.* 12), *s.* 50.

CASE STATED by Lincoln city justices.

At a court of summary jurisdiction at Lincoln an information was preferred by the appellant, Charles Hubert Walters, chief constable of the city, against the respondents, Geoffrey Lunt and his wife, charging them that "between August 1 and 31, 1950, they jointly feloniously did receive from Richard Norman Lunt, aged seven years, a child's tricycle of the value of £2, the property of Walter Cole, which had theretofore been feloniously stolen, knowing the same to have been stolen." A similar information was preferred against them in respect of a child's fairy cycle alleged to have been received by them on March 11, 1951, from the same child. The child was the son of the respondents. The justices held that the respondents could not be guilty of receiving stolen goods, because they had received them from a child under eight years old who could not be found guilty of stealing, and that, accordingly, there had been no larceny. They, accordingly, dismissed the informations, and the prosecutor appealed.

Held, applying *R.* v. *Creamer* (1919) (83 J.P. 120), that the decision of the justices on the informations charging receiving was right, but that, if the prosecution were to prefer a further charge either of larceny as a bailee or larceny by finding and the requisite guilty intent on the part of the respondents were established, they could be convicted on either of those charges.

Counsel: *T. R. Fitzwalter Butler* for the appellant; the respondents did not appear.

Solicitors: *Sharpe, Pritchard & Co.*, for J. H. Smith, town clerk, Lincoln.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

July 25, 1951

PARKINSON AND ANOTHER *v.* AXON

Road Traffic—Limitation of driving time—Prohibition against driving for any continuous period of more than five and a half hours—"Time spent by a driver on other work in connexion with a vehicle or the load"—Work at depot as sorter of parcels—Road Traffic Act, 1930 (20 & 21 *Geo.* 5, *c.* 43), *s.* 19 (1) (i), (2) (*b*).

CASE STATED by Manchester justices.

At a court of summary jurisdiction at Manchester informations were preferred by the respondent, John Charles Axon, against the first appellant, John Parkinson, for driving, and against the second appellants, his employers, British Road Service Road Haulage Executive (Manchester Parcels Group), for permitting Parkinson to drive, a goods vehicle for a continuous period of more than five and a half hours, contrary to s. 19 (1) (i) of the Road Traffic Act, 1930. Parkinson drove a goods vehicle from 2 *p.m.* to a time not later than 6.30 *p.m.*, but he stayed on at the depot until a time later than 7.30 *p.m.*, because it was the practice in the depot for the second appellants to invite any drivers on parcels collection and other short distance journeys who so wished to augment their wages by working "on the deck" after the completion of their actual driving to assist the staff of porters and sorters normally employed there. Working "on the deck" consisted of unloading vans on to the loading deck, checking and sorting the parcels so unloaded, and re-loading the same into the vans. The justices held that this work was "work in connexion with a vehicle or the load carried thereby," which by s. 19 (2) (*b*) of the Act was to be "reckoned as time spent in driving" and convicted both the appellants, who appealed.

Held, that in the additional work Parkinson was not a driver at all, but was acting only as a sorter of parcels, and that, accordingly, the work did not come within s. 19 (2) (*b*) and no offence had been committed. The appeals must, therefore, be allowed.

Counsel: *Backhouse* for the appellants; *R. J. Parker* for the respondent.

Solicitors: *M. H. B. Gilmour*; *Treasury Solicitor*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

STEWART *v.* CHAPMAN

Road Traffic—Careless driving—Notice of intended prosecution—Despatch by registered post—Notice to reach addressee in ordinary course of post within statutory time—Day of offence not to be included in fourteen days—Road Traffic Act, 1930 (20 & 21 *Geo.* 5, *c.* 43), *s.* 21 (*b*).

CASE STATED by Middlesex justices.

At a court of summary jurisdiction an information was preferred by the appellant, Ronald Stewart, a police officer, charging the respondent, Peter John Chapman, with driving without due care and attention, contrary to s. 12 (1) of the Road Traffic Act, 1930. A preliminary point was taken on behalf of the defence that notice of the intended prosecution had not been given to the respondent within fourteen days of the commission of the alleged offence as required by s. 21 (*b*) of the Act, and on that issue the prosecution accepted the following facts as correct. The alleged offence was committed at 7.15 *a.m.* on January 11, 1951. Notice of intended prosecution was despatched by registered post at 1 *p.m.* on January 24 and was received by the respondent on January 25 at about 8 *a.m.* The justices held that the preliminary point succeeded, and dismissed the information. The prosecutor appealed.

Held, (i) that it is not sufficient to post the notice within the fourteen days; it must be posted within such time as would enable it, in the ordinary course of post, to reach the addressee within the statutory time; but (ii) that the date of the commission of the offence was not to be included in the computation of the fourteen days, and, therefore, the case must be remitted to the justices with an intimation that the notice was served in time and that they must proceed with the hearing of the case.

Counsel: *Vernon Gattie* for the appellant; *Elson Rees* for the respondent.

Solicitors: *Solicitor for Metropolitan Police*; *Ponsford & Devenish*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

SHIMMELL *v.* FISHER AND OTHERS

Criminal Law—Taking and driving away motor vehicle—"Driving"—Vehicle propelled by pushing—No motion of vehicle under own power—Road Traffic Act, 1930 (20 & 21 *Geo.* 5, *c.* 43), *s.* 28 (1).

CASE STATED by Stockport justices.

At a court of summary jurisdiction at Stockport informations were preferred by the appellant, Laurence Shimmell, a police officer, charging the respondents, one Fisher and two other youths, with taking and driving away a motor vehicle without having the consent of the owner or other lawful authority, contrary to s. 28 (1) of the Road Traffic Act, 1930. The motor vehicle in question was standing on the recreation ground at Stockport; two of the respondents sat in it, one of them being at the driving wheel; the latter took off the brake and the others gave the vehicle a push; and it went a few yards because there was a depression in the ground. When it stopped, they tried to start the engine, but it did not fire properly. The vehicle, therefore, never moved under its own power. The justices were of opinion that they ought not to give the same construction to "drives away" in s. 28 (1) of the Act of 1930 as must be applied to "carries away" in s. 1 (1) of the Larceny Act, 1916, and that, having regard to the limited motion of the vehicle and the limited degree of control exercised by the respondents, they had not "driven away" the vehicle within the meaning of s. 28 (1). They, accordingly, dismissed the informations, and the prosecutor appealed.

Held, that any causing of the vehicle to move from its position was sufficient to constitute "driving away" within s. 28 (1), and that the case must be remitted to the justices with the direction that the offences charged were proved.

Counsel: *H. A. P. Fisher* for the appellant; the respondents did not appear.

Solicitors: *Gregory, Rowcliffe & Co.*, for J. H. W. Glen, Stockport.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

APPEALS TO QUARTER SESSIONS AGAINST CONVICTIONS FOR DANGEROUS DRIVING

A correspondent writes : " In the issue of the *Justice of the Peace and Local Government Review* of February 22, 1936, an article appears under the above heading which, after asserting that several cases have been reported in which the Appeal Committee of Quarter Sessions has substituted a conviction for driving without due care and attention contrary to s. 12 of the Road Traffic Act, 1930, for the original conviction under s. 11 of that Act, proceeds to set out the authority for so doing. The writer bases his opinion in support of the practice upon the words which appear in s. 31 (1) (vii) of the Summary Jurisdiction Act, 1879, " Make such other order in the matter as they think just and by such order, exercise any power which the court of summary jurisdiction might have exercised." The interpretation put upon these words in the article in question seems to be too wide. The words " and make such other order " must mean order relevant to the matter in issue which in the case in point is a conviction for dangerous driving. It is submitted that they cannot be construed so as to give power to find a person guilty of some other offence.

" The jurisdiction of the Appeal Court of Quarter Sessions is an appellate jurisdiction. If it adopts the practice of directing a charge for careless driving to be preferred pursuant to s. 35 of the Road Traffic Act, 1934, and proceeds forthwith to hear that charge as suggested in the article it is exercising an original jurisdiction. What is to happen if the Appeal Court convicts the appellant of careless driving and the appellant considers that the decision is wrong ; to whom is he to appeal ? The proper course for the Appeal Court to adopt if it considers that the charge of dangerous driving is not substantiated but considers that there is a *prima facie* case of careless driving under s. 12 of the Road Traffic Act, 1930, is to reverse the decision of the court of summary jurisdiction with regard to the dangerous driving and direct that a charge of careless driving shall be preferred against the appellant. It is then the duty of the prosecution to proceed with the fresh charge in the magistrates' court. If the appellant is convicted of that offence he can then appeal to quarter sessions in the normal way."

[We thank our learned correspondent for his views. Section 31 of the Summary Jurisdiction Act, 1879, as substituted by the Summary Jurisdiction (Appeals) Act, 1933, s. 1, gives to quarter sessions three possible courses of action : (*a*) to confirm, reverse or vary the decision of the summary court, or (*b*) to remit the matter with their opinion to the summary court, or (*c*) to make such other order as they think just and by such order exercise any power which the summary court might have exercised.

It is beyond question that one of the powers of a summary court on the hearing of a charge of dangerous driving is that under s. 35 of the Road Traffic Act, 1934, (being of opinion that the charge of dangerous driving is not proved) of directing or allowing a charge under s. 12 of the Act of 1930 to be preferred and of proceeding, subject to the safeguards in the section, to hear that charge forthwith. We can see no reason why the words in s. 31 of the Summary Jurisdiction Act, 1879, in the alternative we have lettered (*c*), should be restricted so as to prevent quarter sessions hearing an appeal from conviction on a charge under s. 11 and being of opinion that that charge is not proved, from exercising this particular power of a court of summary jurisdiction.

The objection about the right of appeal is similar, in our view, to that which has been raised about the lack of any right of appeal against sentence by a person sent to quarter sessions under s. 29 of the Criminal Justice Act, 1948, and sentenced by that court to a punishment within the powers of the summary court. The answer in that case is that, had the summary court imposed a sentence, appeal against that sentence would have been to quarter sessions, and quarter sessions would have had then to consider the point they have in fact decided, *i.e.*, what was a proper sentence within the summary court's powers ?

Similarly, if the summary court had been directed that a charge be preferred under s. 12 and had convicted, appeal against that conviction would have been to quarter sessions. Is this any different in effect from quarter sessions saying of their own motion that in their view on the evidence available a conviction under s. 12 is the proper one ? The fact that they direct the preferring of the charge does not mean that they will necessarily convict, and the defendant gets what is really an appeal court hearing and has no legitimate grievance if he is convicted by quarter sessions under s. 12.

The fact that the High Court is prepared to take a broad view of the powers given to an appeal tribunal is shown by the case of *Fulham Borough Council* v. *Santilli* (1933) 97 J.P. 174.

Ed., J.P. and L.G.R.]

WELSH OFFICE OF MINISTRY OF LOCAL GOVERNMENT AND PLANNING

The Minister of Local Government and Planning (Mr. Hugh Dalton), has decided to set up in Cardiff a Welsh Office of his Department to administer the planning functions in Wales and also the housing and local government functions hitherto carried out by the Welsh Board of Health.

He has appointed Mr. William Thomas, formerly a member of the Welsh Board of Health, to take charge of the Welsh Office, with the rank of Under Secretary.

The Headquarters of the new office will be in the Welsh Board of Health building at Cathays Park, Cardiff.

SOME GERMAN-OWNED SECURITIES TO BE RELEASED FROM CONTROL

The Board of Trade announces that His Majesty's Government in the United Kingdom have decided to waive certain of their rights in respect of such German-owned securities as are expressed in German currency and issued by the German State or by a body of persons constituted or incorporated in or under the laws of Germany.

Accordingly, the Board of Trade is prepared to receive applications from their former German owners for the release from control under trading with the enemy legislation of securities of German issue expressed in German currency, whether issued in registered or bearer form, and also of certain documents evidencing ownership in such securities. These documents may be, for example, certificates of interest issued by persons other than the issuers of the securities, where either the certificate of interest or the register in respect thereof is in the United Kingdom.

Applications for release should be made on a form to be obtained from : the Administration of Enemy Property Department, Board of Trade, Branch 4, Lacon House, Theobalds Road, London, W.C.1.

NEW COMMISSIONS

CHESTER COUNTY

Mrs. Gwendolen Maude Andrew, Studley, Jacksons Lane, Hazel Grove.
James Keith Batty, Winnington Works, Northwich.
Mrs. Marjorie Mary Collins, Little Brookfield, Lymm, nr. Warrington.
Alfred Cooper, 94, Heath Road, Runcorn.
Mrs. Nancy Crawford, 65, Chester Road, Huntington, Chester.
Mrs. Eileen Daley, 5, Cross Lane, Marple.
Tom Dewhurst, Radbrooke, Rope Lane, Wistaston.
Miss Theresa Elsie Dudley, Cranleigh, Weston Road, Runcorn.
Mrs. Vera Helen Evison, 21, Park Lane, Frodsham.
Lady Leverhulme, Westwood Grange, Neston, Cheshire.
Henry Gair Greg, Oak Brow, Styal.
Sydney Hope, Knowles House, Handforth, Wilmslow.
Miss Margaret Hughes, Upton Lawn, Upton-by-Chester.
David Ronald Hunter, Hillcrest, Frodsham.
Miss Mary Winifred Lee, High Street, Neston.
Peter Alcock Meggitt, Marston House, 177, Heath Road, Runcorn.
Alfred Neate, 14, Broadway, Bramhall.
Herbert Pogson, 54, London Road, Lyme Green, Sutton, Macclesfield.
Donald Farnham Pollard, 20, Athol Road, Bramhall.
John Herbert Prescott, 29, Pine Gardens, Upton-by-Chester.
Roland George Rowlands, 10, Townshend Avenue, Irby, Wirral.
Harry Verdun Stone, 8, Ashton Road, Bredbury.
* Thomas Edward Thornley, Overdale, George Lane, Bredbury.
Albert Tilley, 14, Olive Drive, Neston.
Thomas Ian Jodrell Toler, Crabtree Farm, Alvanley, nr. Helsby.
Albert Turner, 5, Sherbrooke Road, Disley.
Fred Watts, Fir Tree, Weston Lane, Weston, nr. Crewe.
Stephanie Lilian Watts, Haslington Hall, nr. Crewe.
Thomas Whitby, Holmfield, Penn Lane, Runcorn.
Miss Grace Woodcock, 82, Moorland Avenue, Bromborough.
Edward Arthur Wright, 20, Norris Road, Sale.
George Wright, 16, New Albert Terrace, Runcorn.

HARTLEPOOL BOROUGH

Miss Elsie Elizabeth Garbutt, 9, Friar Terrace, Hartlepool.
Mrs. Mabel Elizabeth Smith, 4, Gladstone Street, Hartlepool.
Thomas Wood, 61, Alliance Street, Hartlepool.
Joseph Westmoreland, 79a, Northgate, Hartlepool.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 48.

NO PIGEON PIE

An unemployed man appeared at Swansea Magistrates' Court on June 22, 1951, charged with stealing a quantity of lead valued at £1, from a Territorial drill hall, contrary to s. 8 of the Larceny Act, 1916.

The defendant was also charged with stealing 22 *lbs.* of fish, valued at 7*s.* and to this latter charge he pleaded guilty.

For the prosecution, evidence was given by the caretaker of the hall that about 11 *p.m.* one night early in June, he saw the outline of a man lying along the apex of a wall of one of the buildings at the drill hall. He telephoned the police, and when he returned he saw the defendant on the ground.

Defendant, when asked by a police constable what he was doing on the wall, replied: "I was waiting for my mate." In a statement made by defendant to the police, he stated that he had been on strike for a time and in receipt of 26*s.* a week assistance, and when going home he saw a pigeon on the roof of the Territorial building. He thought he would fancy a bit of pigeon pie and so later he returned to the building, saw a drain-pipe running up a high wall and climbed it. Defendant added that the pigeon was still there, but he could not get it, and the only reason why he went there was to catch the bird.

A police witness stated that he found the lead and defendant's knife near a girder, and on examination at the forensic laboratory at Cardiff, the blade of the knife was found to bear a deposit of metallic lead.

Defendant was sentenced to three months' imprisonment.

COMMENT

Section 8 of the Larceny Act, 1916, is not so well known as s. 2, under which the majority of cases of larceny are laid. The section creates a very large number of offences for stealing or damaging fixtures, trees, shrubs, vegetable produce, etc., and subs. 1 (*d*) makes it an offence to steal any metal or utensil or fixture fixed in or to any building. The offence is punishable as for simple larceny with five years' imprisonment and by s. 24 of the Criminal Justice Act, 1925, is triable summarily with the accused's consent. R.L.H.

No. 49.

A DIABETIC DRIVES DANGEROUSLY

A wholesale fruit and potato merchant appeared before the Newton-le-Willows Magistrates on April 20, 1951, charged with driving a motor car in manner dangerous to the public contrary to s. 11 of the Road Traffic Act, 1930.

The short particulars were that the defendant, who was a diabetic, got up with a headache for which he took two Aspros, but the headache persisted. About noon he went to a public house to meet a friend, had three small whiskies with soda, and at that time, according to his friend, was quite alright apart from the headache. Whilst at the hotel he played two games of snooker, but did not finish the second game.

He said he had lost interest in the game and went to the bar where he put down a glass of whisky, which he knocked over, although he did not remember doing so.

He left the public house, and to use the defendant's own words: "I felt heady and had no interest in anything, so I left my friend between 1 *p.m.* and 1.15 *p.m.* to return home in my car for lunch." On his way home he drove for approximately two to three miles, mostly on the wrong side of the road, caused a bus to swerve to the off-side of the road, narrowly missed a woman who had to squeeze against a wall, knocked down a school sign and finally killed a boy cyclist against a lamp standard where the car came to rest.

The defendant said he had no knowledge of the driving except that he remembered leaving the hotel, and after passing a railway level crossing and a bowling green some two miles on the journey, his mind was a complete blank.

Samples of the defendant's blood were taken and it was ascertained that he had been suffering from an insulin coma. The medical evidence was that an insulin coma can come on gradually or suddenly, but there would be some prior warning as certain particular symptoms are always to be found preceding a coma.

The defence was that this was a sudden illness, and *Kay* v. *Butterworth* (1946) 110 J.P. 75, was referred to. The solicitor for the complainant said that this was not a sudden illness, as defendant would have had some prior warning.

The justices found the defendant guilty and fined him £10, ordered him to pay £19 6*s.* costs and disqualified him from driving for twelve months.

The chairman said the defendant being a diabetic should have known his condition at the time of leaving the public house was such that he ought to have taken reasonable precautions, and not driven the car.

The defendant appealed against his conviction and his appeal came before the Lancashire Appeals Committee (West Derby Hundred) at Liverpool on June 5, 1951, when the appeal was dismissed with costs.

The chairman said that although defendant's defence was that he was in comatic condition, according to the medical evidence he must have had some warning.

COMMENT

It would appear that, assuming the magistrates accepted the defendant's evidence, their decision as to the innocence or guilt of the accused would depend on their acceptance of the medical evidence called for the prosecution which was that a diabetic coma however suddenly it may come on is always preceded by certain particular symptoms which give warning to the diabetic of what is about to happen.

Humphreys, J., in *Kay* v, *Butterworth*, *supra*, emphasized that the circumstances which excuse what would otherwise be dangerous driving must be matters wholly beyond the driver's control, *e.g.*, driver struck by a stone or attacked by a swarm of bees, etc.

(The writer is indebted to Mr. G. Holbrook, deputy clerk to the Warrington (Lancashire) Justices for information in regard to this case.)

No. 50.

A DISHONEST BUS CONDUCTOR

A Llandilo bus conductor appeared at Swansea Magistrates' Court last month to answer six charges, each alleging that he had aided and abetted, contrary to s. 5, Summary Jurisdiction Act, 1848, a passenger to do and commit the offence of leaving a public service vehicle in which the passenger was travelling without paying the fare for the journey taken and with intent to avoid payment, contrary to reg. 11 (*c*), the Public Service Vehicles (Conduct of Drivers, Conductors and Passengers) Regulations, 1936.

For the prosecution it was stated that in consequence of information given to an inspector of the South Wales Transport Company, observation was kept over a period of time upon the bus in which defendant served as conductor. An inspector in mufti sat close to a certain passenger and observed that upon two separate trips the defendant at no time approached the passenger for money nor cancelled a ticket for him. On a third occasion whilst the inspector in mufti was sitting close to the passenger who had again not been approached by the conductor, the bus was boarded by a uniformed inspector who asked the passenger for his ticket. The inspector queried the ticket which the passenger produced and the latter said that his ticket had been cancelled on the stairs when he entered the bus. The defendant was called and at first said he had cancelled the ticket but later he said: "Come downstairs and I will tell you everything."

Similar evidence was given in regard to three trips of another passenger.

Defendant, when interviewed by a detective sergeant, said that the two passengers had approached him independently suggesting that they would make it worth his while if he gave them free rides, and he had received altogether 25*s.* or 30*s.* from them.

The passengers had paid him in half-crowns at irregular intervals and he had at no time given either of them a ticket nor did he know from where they obtained the tickets they produced to the inspector.

The defendant, who pleaded guilty, was fined a total of £12, the learned stipendiary magistrate stating that he should have resisted the temptation.

Each of the passengers who was summoned for an offence under reg. 11 (*c*) was fined a total of £6.

PENALTIES

Bromley—June, 1951—under the influence of drink while in charge of a motor van—fined £10. To pay £2 10*s.* costs. Disqualified from driving for a year. When defendant stated he would lose his job, chairman replied that bench regarded case as an unfortunate lapse and suggested he should ask his employers to find him a non-driving job.

Oxted—June, 1951—driving without a road fund licence—fined £5. Defendant when asked by a policeman why he exhibited an out of date licence replied, "I put it on to prevent you people from stopping me."

Wallington—June, 1951—causing grievous bodily harm—six months' imprisonment. Defendant, a twenty-two year old plasterer, was bound over in February of this year for twelve months in the sum

of £5 for an assault on a bus passenger. He was ordered to forfeit this sum when convicted of the above offence. Defendant struck a fellow guest after a wedding reception causing a wound in the head and laceration of the lip which had to be stitched.

Croydon—June, 1951—failure to pay National Health contributions (two charges)—fined £5 on each summons and to pay arrears £54, at the rate of £2 a week. Defendant a greengrocer.

Croydon—June, 1951—false representation as to earnings (three charges)—fined a total of £9. To pay £3 3*s.* costs. Defendant with his wife earned £29 hop picking at a time that he falsely represented that his earnings were not more than 21*s.* per week.

Swaffham—June, 1951—breaking windows—two months' imprisonment. Defendant, a woman aged seventy-five, was convicted for the 109th time. She asked for a three months' sentence saying that two months meant only "Just a wash and brush up."

Stratford—July, 1941—(1) combining to disobey the lawful command of the master of a ship (two defendants), (2) assaulting the master (two defendants)—each defendant sentenced to two months' imprisonment on each charge (concurrent). The offences were committed at La Romana, Dominican Republic, where defendants, when ordered below by the master, threw a 15 *lb.* jar of pickles from the poop at the master as he stood on the quay.

Old Bailey—July, 1951—stealing newspapers and 1*s.* 10½*d.*—fined £10. Defendant a civil servant aged fifty-two. The Recorder observed that the practice of newsvendors in leaving newspapers and money on unattended stalls presented a grave temptation to otherwise honest people.

REVIEWS

Arms of the Law. By Margery Fry. London : Published for the Howard League for Penal Reform by Victor Gollancz Ltd. Price 12*s.* 6*d.* cloth ; 8*s.* 6*d.* paper edition.

This book, says the author, is concerned with the penalties imposed on law breakers, the sanctions with which the law is enforced. The methods used for the prevention of crime, not with the definition of those crimes.

Early conceptions of crime and punishment may seem today crude and brutal. Miss Fry shows how primitive man inflicted punishment often as a means of propitiating the gods where some taboo had been broken and the community was fearful of the consequences. Then came the idea of retribution or revenge to satisfy those who suffered through the crime, later to be accompanied or even replaced by compensation. Fear of the criminal became the principal motive for the harsh punishments which were devised in the confident belief, so decisively falsified, that dreadful punishments must assuredly deter potential offenders.

Miss Fry, who is slow to condemn, quick to see the best even in those who seem now to have been cruel to the point of sadism, mentions without dwelling upon them, some of these barbarities, and adds : " The men who inflicted these cruelties were probably persuaded in their conscious minds, that their system was essential to the protection of society. Of the hidden springs of their own conduct they were pretty certainly often unaware. The love of power, the delight in cruelty for its own sake, the subtler perversities by which men seek to revenge themselves on a world which has thwarted their own desires—these are rarely known to those whom nevertheless they move." There is perhaps a warning here for some of us even today.

Coming nearer to our own times, when thinking people began to question the old theories, the book reminds us of Beccaria and Bentham, who took the philosophical view, while John Howard and Elizabeth Fry, strongly influenced by religious motives, became the practical reformers. Miss Fry belongs both to the philosophers and the practical reformers. She sees principles with unfailing penetration, she shows the accuracy of the scientist and the logician and with it all she has the quiet determination of a practical reformer who is not to be deterred because knowledge is not yet perfect and progress is often slow.

After an illuminating chapter entitled " Digression on Fear " there follows a description of all the various methods of punishment or treatment available to the courts today. The general reader, who has probably the vaguest idea of what probation means and what probation officers do, will immediately get a grasp of it all from the brief but vivid descriptions of some kinds of case work. The same reader will learn what happens if an offender does not pay his fine, or if a man fails to pay his wife's maintenance allowance. The borstal system, modern prison administration, the new corrective training and preventive detention, approved schools and the possibilities of detention centres are all discussed.

Miss Fry has seen much for herself, both in this country and in many others. A keen observer, she is not blind to defects, but she has far more praise than criticism to bestow upon our modern institutions, and upon the devoted men and women working in prisons, borstal institutions and approved schools, or in the open as probation officers. Of our present methods she is able to say : " though our penal system is still far from perfect, it is moving towards the ideal of treating the individual as a human being with capacities for good rather than as a horrid example for the terror of others." Indeed, she finds officials generally enlightened, often enthusiastic, and it is largely public opinion that lags behind, preventing progress from becoming more rapid. Where she sees the need for improvement in some method or institution she is not content to leave it at that. The book contains many practical suggestions on such subjects, for example, as the better employment of prisoners without infringing the claims of free labour, and on ways of dealing with sub-normal or epileptic offenders who are entirely unfitted for prison discipline or for the life of an approved school.

Throughout, it is constructive treatment, rather than the infliction of punishment, that Miss Fry advocates. That is far from saying that she would at once abolish existing punitive methods. She recognizes that many offenders must be put under restraint, just as lunatics and others sick in mind or body may have to be, in the interests of the rest of the community, and that reformative treatment may involve what the offender regards as punishment. What she wants is a continuance of the present inquiry as to causes of crime and the search for the remedies which may include punishment. She refuses to despair, and that is perhaps one of many reasons for her objection to the death penalty, a subject which she treats with complete fairness and moderation.

Naturally, the position of the psychologist and the psychiatrist in the scheme of things is not overlooked, and no reader could reasonably think that they are given a place of exaggerated importance. They are recognized for the undoubted value of their work, and there is here no clash with common sense. As Miss Fry says : " Common sense today has changed from common sense of fifty years ago."

This is a cheerful book, heartening to read, because the author, out of her great experience and wisdom sees so much ground for optimism. It would be difficult to find a finer book to place in the hands of anyone who wants to know what is, and what ought to be done with offenders.

No Hiding Place. By Percy Hoskins. London : Daily Express Publications. Price 8*s.* 6*d.*

Mr. Percy Hoskins, *Daily Express* chief crime reporter, is the author of an arresting narrative of the achievements of the Metropolitan Police C.I.D., and as the author's personal contact with New Scotland Yard extends over the past twenty-five years he has obviously had remarkable opportunity to study development in the war against the law-breaker.

The book is well illustrated with a varied assortment of photographs, showing many phases of police work, and quite a number of the Yard's personnel.

Police work today in the field of crime embraces the technical and scientific ; technicians and scientists figure prominently, side by side, with the investigators in major cases. Indeed not infrequently minor ones, in which unusual features occur, such as minute traces which can only be translated into clues by specialized examination or treatment. Mr. Hoskins has succeeded in focusing attention upon facets of the work which although of primary importance would normally be viewed by many either with monotony or distaste, and under his skilled touch the whole work thereby caters for the general reader as well as the specialist.

No Hiding Place has the incomparable merit of dealing with the subject from the beginning ; the introduction shows what New Scotland Yard is like; then the author goes on to describe the " Detective in the Making." This practice, to begin at the beginning, is sometimes rare nowadays ; but it is as helpful to the reader as ever it was.

The book thenceforth is mostly devoted to accounts of celebrated crimes amply illustrated with pictures. The author portrays, with mature artistry, the vital features ; with appropriate emphasis he leads to the basic points, all the time refraining from over-writing immaterials. The reader is thus able to get an immediate grip of each narrative, without any risk of being confused by a multiplicity of detailed facts.

Those who find enjoyment and relaxation in crime fiction will be equally attracted, with others, who peruse the book for its factual value ; indeed, it ceases to be mere criminal history and becomes absorbing current crime.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

A.B.O. TEST IN BASTARDY

I have been very interested in the article by Mr. Ramage under the above heading in your issue of July 21, which prompts me to state what happened in a Bastardy case whilst I was in private practice.

I was at that time consulted by a very tearful girl with her family and the local minister, and was instructed to take proceedings against a certain youth in respect of the child born to the girl. Evidence was taken and seemed very clear in that the defendant had been friendly with the complainant over quite a period, and at a time which fitted in reasonably well with the date of the birth he had been out with the girl and another couple and had intercourse with her in the fields. Sufficient corroboration of this was available from the other girl.

The case seemed quite clear, but I found that the date of conception should have been about a fortnight earlier than the date given. One well appreciates that in a period of gestation a fortnight is neither here nor there, but as a full 280 days fitted in with the local holiday period I questioned the girl very closely regarding her movements during the holiday week. She denied for quite a time that she had had any association or intercourse with any other person, but after pursuing this matter somewhat relentlessly at continued interviews I ultimately got the truth from her.

What had happened was that during the holiday week she had been on the fairground and had met a man who had had intercourse with her. Her periods were due within a matter of a few days and she missed such period. Realizing this and knowing that she could not hope to trace the fairground man she deliberately inveigled the defendant into going out with her and so conducting herself that intercourse did, in fact, take place within a fortnight of the intercourse with the man on the fairground.

That was a case which could have come into court and succeeded without any question. Intercourse would have been proved, I think conclusively, against the defendant, and in fact, if he was honest he would have had to admit it. When intercourse was proved or admitted I do not see how the defendant could avoid an order except by proving intercourse with someone else. The girl was not really a loose character and no-one had any knowledge whatever of the incident on the fairground. Perhaps the moral arising from this case is that one should not always believe too easily.

May I also refer to a further point in connexion with the case outlined by Mr. Ramage. Why did the girl not call the defendant to prove the letters? Witness summons could have been issued against him. He could have been put in the box and asked whether the letters were his or not.

Yours faithfully,
ALBERT PLATT,
Clerk to the Justices.

Justices' Clerk's Office,
1 Wellington Road,
Ashton-under-Lyne,
Lancs.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

POLICE PAY

Your article on Police Pay presents the subject in a very well balanced way, but one is left with the impression that it is not so much a case of police pay lagging behind, but rather of increases of other workers' pay to an extent which, in these hard times, is quite unjustifiable except where accompanied by an increased output.

Local Government officials put in something less than forty hours a week. If an agricultural labourer can work forty-eight and more hours a week, why cannot a clerk? One hears of the "hidden emoluments" of the Police; should we not also remember the many hours of spare time available to short-time workers in which they are at liberty to undertake other work and thus add to their weekly wages?

It is agreed on all sides that greater output is needed today. Is it too much to hope that our friends in local government may give a lead in this?

Your obedient Servant,
VILLAGER.

THE WEEK IN PARLIAMENT

From our Lobby Correspondent

PAY OF STIPENDIARY MAGISTRATES

Mr. Richard Law (Haltemprice) asked the Secretary of State for the Home Department in how many instances since the war, he had, after consultation with local authorities, authorized an increase in the salary of a stipendiary magistrate; and in how many instances he had confirmed the appointment of a new stipendiary at a salary higher than that of his predecessor.

The Secretary of State for the Home Department, Mr. J. Chuter Ede, replied that ten stipendiary magistrates had received increases in salary since the war, including three whose increases were granted with effect from April 1, 1945. In one case, a higher salary was paid on a new appointment.

Asked whether, in view of the fact that the salaries of county court judges and Metropolitan magistrates were to be raised, he would, after consultation with the authorities concerned, review the salaries of stipendiary magistrates, Mr. Ede replied in the affirmative. He said that negotiations with local authorities on such matters were apt to be rather protracted, because even when willing to move they were not always prepared to go quite as far as he would like.

Asked by Mr. S. S. Awbery (Bristol C.) whether he would also consider the question of the salaries of magistrates' clerks, Mr. Ede replied: "The salaries of magistrates' clerks are matters for recommendations to me by the appropriate authority."

AGE OF MARRIAGE

Mr. F. S. Cocks (Broxtowe) asked the Attorney-General whether his attention had been drawn to cases where women had gone through the ceremony of marriage and had children and had later been declared unmarried on the grounds that they were under sixteen years of age when the marriage ceremony was performed; and whether he would introduce legislation to amend that law.

The Solicitor-General, who replied, said he was aware of those cases. The Lord Chancellor proposed to request the Royal Commission on Marriage and Divorce to consider whether any amendment should be made in the law in view of those cases.

THE ADJOURNMENT

Parliament has now adjourned until October 16, 1951.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Monday, July 30

BRITISH TRANSPORT COMMISSION ORDER CONFIRMATION BILL, read 3a.
PRICE CONTROL AND OTHER ORDERS (INDEMNITY) BILL, read 2a.

PERSONALIA

APPOINTMENTS

Mr. Kenneth Pearce, deputy town clerk of Oldbury, has been appointed town clerk. He succeeds Mr. Arthur Culwick who is to retire after forty years' government service of which twenty-four have been spent at Oldbury.

Mr. A. R. Harris, assistant solicitor to the borough of Islington, has been appointed senior assistant solicitor to the borough of Camberwell, in succession to Mr. T. Thomas who has been appointed deputy town clerk.

Mr. J. R. McLey Smith, assistant solicitor to the Wimbledon Corporation, has been appointed second assistant solicitor to the borough of Hendon. Mr. McLey Smith served his articles with Mr. E. M. Neave, O.B.E., town clerk of Wimbledon. During the war he served in the army, attaining the rank of major.

OBITUARY

Mr. Thomas Hume Bischoff, M.C., died on July 27, at the age of sixty-five. He was admitted a solicitor in 1910 and became a partner in the family firm of solicitors in 1914. He was elected to the council of the Law Society in 1923 and in 1928 became chairman of the legal education committee of the society. For many years he was a member of the Solicitors' Benevolent Society.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption—*Illegitimate child of married woman—Position as to husband.*

We read with interest your reply to P.P. No. 1 at 115 J.P.N. 220 with regard to the adoption of children, and we shall be very glad to have your advice on the following problem which has arisen.

The mother of the infant left her husband in June, 1948, and the infant was born in August, 1950. Her husband being unaware of its existence pays his wife, who is in poor circumstances, a small voluntary maintenance allowance. The mother refuses to disclose her husband's name and address, and insists that he is not approached for his consent for fear of losing her maintenance.

It can be proved that the husband is not the father, but since the child was born in wedlock, and there being no separation or affiliation order, his consent as legal guardian and a person liable to contribute to the support of the child would appear to remain necessary.

Do you agree? If so your advice as to the grounds, if any, on which the husband's consent as guardian and contributory be dispensed with in the circumstances would be much appreciated. SEPA.

Answer.

As there is no separation by order of a court, the strong presumption is that the husband is the father of the child, and, as we have said in earlier answers, we hold that he must be made a respondent and served with notice as the parent of the child. The wife, as mother of the child, is also a respondent, and in the circumstances of this case it may be necessary to require her attendance to prove that her husband is not the father. She should be required to disclose the address of her husband so that notice can be served. The court is not concerned to conceal her adultery, but only to carry out the provisions of the law.

If it be proved that the husband is not the father, his consent is not required, since he is not a parent and is not the guardian of the child or liable for its maintenance. If the presumption of legitimacy be not rebutted, his consent could be dispensed with only on one of the grounds specified in s. 3 of the Adoption Act, 1950, and it is difficult to see how this could be, if he is unaware of the existence of the child and his whereabouts are being concealed, although known.

2.—Criminal Law—*Larceny or false pretences—Unauthorized sale of employer's property.*

The Air Ministry own certain land in this division and during the war a large quantity of electric cable was laid about three feet underground in the area. It was recently discovered that 1,000 yards of this cable, valued at over £200, had been dug up and taken away. Inquiries revealed that this had been done by a local scrap merchant. The latter when seen readily admitted having dug up and taken the cable away, but said that A, a civilian charge hand in the employ of the Air Ministry, had sold the cable to him for £50. A denies this, but there is sufficient evidence to prove that what in fact happened is that A offered to sell the cable to the scrap merchant for £50 saying that it was for disposal. The money was handed over and the scrap merchant went to the Air Ministry area and dug up and carried away the cable. A, although a servant of the Air Ministry, had no control over the cable except as a maintenance engineer and had no authority to dispose of it.

Having regard to the fact that there is no actual "taking" by A (neither was he present when the cable was taken), and that the cable was buried underground, I should be pleased to have your opinion as to what offences have been committed and under what Act and section. SPIV.

Answer.

It is difficult to advise without full knowledge of all the facts. If it is considered that the scrap merchant acted innocently, A could be charged with obtaining money from him by false pretences. If, on the other hand, it is thought that he was aware that A was acting dishonestly, A could be charged as an accessory before the fact in an offence of larceny by the scrap merchant. The relevant sections would be s. 1 of the Accessories and Abettors Act, 1861, and s. 35 of the Larceny Act, 1916. There could also be a charge of conspiracy to steal if both were considered to have planned an offence. If the circumstances are such as to show that the cable was attached to the realty, a question would arise as to larceny, in the absence of evidence that the cable had been severed from it and abandoned before the actual taking. *See* Larceny Act, 1916, s. 1.

3.—Housing Act, 1936—*Disappearing tenant—Service of notice to quit.*

One of the council's tenants has disappeared leaving his furniture in the house of which possession is required. Difficulty arises as to the service of notice to quit, and I shall be glad if you will inform me whether there is any authority for service to be effected by posting on the premises. This is authorized service where a lease makes special provision for such a case, and your opinion is requested as to whether a resolution of the council making a similar provision in the case of council house tenancies would render such service effective. ALA.

Answer.

The council could not by unilateral resolution give themselves a right to serve notice in a manner not provided for by the tenancy agreement, or by statute. But *see* s. 167 of the Housing Act, 1936, and the latter part of our article entitled "The Vanished Tenant" at p. 213, *ante*. As regards future tenancies, a resolution of the council is not of itself effectual, but if in case of dispute the council can show that it had been accepted by the tenant as a condition of the tenancy, then it is as effectual as any other condition. Looking to s. 167 of the Act of 1936, we do not see any particular point in putting the provision mentioned into the agreement.

4.—Housing Act, 1936, s. 10—*Recovery of moneys—Sale—Appointment of receiver.*

A local authority carried out works of repair upon the non-compliance with a notice served under s. 9 of the Act, at a cost of over £100. An account was rendered to the owner who paid a small amount on account. A demand was then served under s. 10 (3) and the owner, shortly afterwards, promised to pay a certain amount monthly. Three months after the service of the demand an order was made under s. 10 (5) for monthly repayments over a period of two years and served by registered post. Only part of the first instalment was paid, and then proceedings were taken for non-payment of five succeeding months' instalments. The magistrates made an order for payment of the arrears immediately, but no payment has been made. Apart from the instalments which were the subject of proceedings before the magistrates, a further three months' instalments are due.

Your opinion would be appreciated on the following points:

1. It is presumed that the local authority have power to sell the property in view of the non-payment of instalments—*see Payne* v. *Cardiff R.D.C.* (1932) 95 J.P. 173—subject to the provisions of s. 103 of the Law of Property Act, 1925. In this connexion will it be necessary to (*a*) serve notice by registered post in respect of instalments due for each of three consecutive months and in the event of none of the three payments being made then it is taken that "the mortgage money has become due" as *per* s. 101, or (*b*) is the position covered by the fact that the order under s. 10 (5) was served by registered post and three months' instalments are overdue and action can be taken to sell the property.

2. Has the local authority power to appoint a receiver immediately to collect the rent and, if so, can a local authority's chief collector be appointed receiver without receiving commission or is it essential that some independent person be appointed receiver at a commission not exceeding five *per cent.* of the gross amount of all moneys received?

3. Can any other useful information be furnished which would enable the authority to recover. AST.

Answer.

1. We agree, and we think (*b*) represents the position.

2. Yes. While we think the local authority's collector could strictly be appointed, we doubt whether this is proper, seeing that the receiver is agent for the mortgagor, and that a mortgagee cannot appoint himself.

3. We have nothing to add.

5.—Landlord and Tenant—*Tenant disappears—Notice to quit—Notice to re-enter and forfeit.*

By a written tenancy agreement made in 1949 A let an unfurnished dwelling-house to B on a monthly tenancy at a rack rent. The tenancy agreement is a short document not specifically referring to any notice to quit, but contains the usual form of proviso for re-entry. B is nearly a year in arrear with the rent, and left the district several weeks ago and is not expected to return. However, he has the key and left the house locked with some sticks of furniture inside. He left no address and cannot be traced. A is seeking possession.

Perhaps the practical course is for A to ignore legal technicalities and to re-enter forthwith. But if he wants to keep within the law what must he do?

1. He may issue a month's notice to quit, but, unless s. 196 of the Law of Property Act, 1925, applies, he cannot serve it. Does s. 196 (3) and (5) mean that a notice to quit "required to be served by" a

post-1925 lease of tenancy agreement can be served by being left on the premises, as the last-known place of abode? If so, is a notice to quit given under a tenancy agreement necessarily "required to be served by" the tenancy agreement? The text books are curiously reticent about s. 196, and the precedent books give (for insertion in leases) clauses dealing with "service of notices" that appear to be unnecessary if s. 196 applies without express incorporation.

2. He may proceed on the proviso for re-entry, but in view of the Rent Acts must get a county court order. The issue of a county court summons operates to determine the tenancy, but he will have to get an order for substituted service of the summons. The tenant will be entitled to relief if he pays up the rent arrears within six months of the possession order.

3. He may apply to the justices for possession under the Distress for Rent Act, 1737, s. 16, as amended by the Deserted Tenements Act, 1817, but, in view of the key and the furniture, may not be able to satisfy them that B has deserted and left unoccupied the premises.

4. The rent does not exceed £20 p.a. so he may apply to the justices under the Small Tenements Recovery Act, 1838. But will the term have "ended or been duly determined by a notice to quit or otherwise" before the "notice of intention to proceed to recover possession" is affixed to the premises? Is not the affixing of the "notice of intention" the constructive re-entry that determines the tenancy?

ARAB.

Answer.

1. Is there a confusion in the query between a notice to quit and a notice of intention to exercise the right of re-entry and forfeiture? We suspect that the latter notice, required by s. 146 of the Law of Property Act, 1925, is in your mind—but *see* subs. (11). If s. 146 applies, s. 196 of the Act is available: it does not apply to a notice to quit properly so called, which is not a notice "required or authorized to be served or given by this Act," and so is not within s. 196. It seems that cannot be effectively served in this case.

2. We agree.

3. We agree.

4. We doubt whether the landlord can get before the justices in this case, because he cannot determine the tenancy by notice to quit, and equally cannot determine it "otherwise" (*i.e.*, by re-entry and forfeiture) until he does re-enter, which in turn he cannot do without an order of a court.

6.—Licensing—*Application for wine on-licence—Plans not deposited twenty-one days before application—Licence granted—Position before confirming authority.*

We seek your opinion upon a matter concerning an application for the grant of a wine licence in respect of a public house which was heard by justices on March 9, at their adjourned general annual licensing meeting and is yet to be confirmed by the confirming authority. All the requirements of s. 15 (*i*) (*d*) of the Licensing Act, 1910 were complied with before the hearing on that day with the exception of the requirements as to plans. These were bespoken of the architect in ample time for him to prepare them for the hearing and he indeed visited the house and made all the notes he required with a view to preparing the drawings. On the same day as he did this, he was taken ill and as a result the plans were not deposited the clear twenty-one days before the hearing of the application by the justices. At the hearing the justices' clerk was well aware of this but the justices neither required the matter to be adjourned in order that the requirements should be complied with nor did they expressly state that they exercised any discretion in the matter; they merely granted the licence subject, of course, to confirmation, without any comment. It would therefore appear that if they have discretion it was tacitly or impliedly exercised. Our concern, of course, is with what action the confirming authority may take on this.

As we see it there are two points and upon these we would like your opinion. First, if it can be said that the justices exercised a discretion, they have such a discretion under s. 9 of the Act in the course of application for a new licence and is such a discretion unfettered by any statutory restrictions and requirements such as are made under s. 15. It is clear that nobody has been misled in this matter and although the plans were deposited late, no objection was raised that anybody had been thereby prejudiced at all. The second point is that this was, of course, an application for an on and off wine licence. The s. 15 provides for new on-licences. Can it be said, therefore, that there is no requirement in actual fact, although it is usual, for the deposit of plans in the case of a wine on and off licence?

It is to be noted that the Finance Act, 1949, s. 73 (8) construed with the Licensing Act, 1910 is a modification of s. 14 of that Act and provides that "except that for the purpose of this section the expression on-licence does not include a licence for the sale of wine alone." No plans, of course, are required at all for an off-licence. In addition we know of no right to any possible objector to inspect the plan; there were in this case no objectors.

We would be most grateful for your opinion at the earliest possible opportunity.

NELL.

Answer.

It is impossible to avoid the conclusion that s. 15 of the Licensing (Consolidation) Act, 1910, is mandatory as to the deposit of plans not less than twenty-one days before the application for a new justices' on-licence is made. The discretion mentioned in s. 9 of the Act is governed by the words "Subject to the provisions of this Act . . ." which, of course, includes provisions as to notices, deposit of plans, etc., contained in s. 15. The licence applied for is an on-licence: every on-licence authorizes sales for consumption either on or off the licensed premises (Finance (1909-10) Act, 1910, sch. I—"Provisions applicable to Retailer's On-licence"). Section 73 (8) of the Finance Act, 1947, has no bearing on the point: this section relates to monopoly value which, by s. 14 of the Licensing Act, 1910, does not apply to the sale of an on-licence for the sale of wine alone.

Apparently the licensing justices took the view that they were entitled to waive the statutory requirement as to the time for the deposit of plans, exercising a judicial discretion on the strong "merits" of the matter as outlined by our correspondent: the confirming authority may be willing to follow the licensing justices in this interpretation of the law. There is no case law on the exact point.

7.—Magistrates—*Practice and procedure—Alternative charges—First heard and dismissed—Procedure as to calling evidence on the second—Hearing together.*

A summons is taken out against a man for stealing lead. A second summons is also taken out against the same man returnable on the same day for receiving lead knowing it to be stolen. The idea being of course that if the defendant was committed on the first summons the second summons would be withdrawn.

The case of stealing lead is first heard; defendant is cautioned, elects to be tried summarily and pleads "not guilty"; and after hearing the case, the magistrates dismiss the charge.

The second charge of receiving the lead is then taken; the defendant is cautioned, elects to be tried summarily and pleads "not guilty." How should the second case be dealt with? The magistrates say they do not want to hear all the evidence again as they have just heard it; the position seems somewhat difficult, and I shall be glad to know your views of which way it should be dealt with:

(1) Should the case be fully tried and all the evidence taken again, as though the first case had never been heard?

(2) Would it suffice if the evidence of the witnesses were read over and the prosecution and the defendant were both given the opportunity to ask the witnesses questions? or

(3) Would it be sufficient if the magistrates called each witness into the box and after he had been sworn, said they had heard his evidence and did not wish to ask any more questions, and then gave the defendant the opportunity of asking any further questions?

It is assumed that it would be quite irregular for the two charges to be tried together in the first instance.

J. IGNORAMUS.

Answer.

We think that provided the defendant is asked clearly whether he consents to the two charges being heard together and does so this procedure is in order: *see R.* v. *Ashborne Justices: Ex parte Maden* (1950) 114 J.P.N. 51.

If the cases are heard separately we consider that the evidence must be given again. It is a fresh case, and the procedure in s. 14, Summary Jurisdiction Act, 1848, must be followed. A "short cut" is sometimes taken, by agreement with both sides, by which witnesses are recalled only for further examination or cross-examination, but we do not think that if this were challenged after conviction it could be justified. It is of interest to note that s. 35 of the Road Traffic Act, 1934, deals specifically with this point where the court directs or allows a charge under s. 12 of the 1930 Act to be preferred after they have decided that one under s. 11 is not proved.

8.—Magistrates—*Practice and procedure—Offender arrested and charged and bailed to appear—Summons subsequently applied for for the same offence.*

A was arrested by the police for being drunk in charge of a motor-car, and was released on bail to appear at the next petty sessional court. Later the police applied for a summons against A for being drunk in charge of a motor-car. Is this in order, and are the police entitled to take out a summons against A for being drunk in charge of a motor car, when he is already bailed to appear at court on a charge for the same offence?

J. CARLEX.

Answer.

The charge at the police station is made without any information being laid before a justice. The application for a summons is under

s.1, Summary Jurisdiction Act, 1848, and the summons gives the accused written notice of the allegations he has to meet. He is in no way prejudiced by this, and we can see no objection to it. It may be that the police had in mind the case of *Blake* v. *Beech* (1876) 40 J.P. 678, and we imagine that at the hearing they will ask to proceed on the summons.

9.—Magistrates — *Practice and procedure — Previous convictions — Method of proof in defendant's absence and when he attends, personally or by an advocate.*

In your Practical Points of February 3 last you expressed the view that where a defendant appears by his counsel or solicitor the court can make the same inquiries into his past record as they could if defendant had appeared in person.

1. Am I right in thinking that a previous conviction for the same or another offence should not be mentioned by the prosecution unless they are in a position to prove it in manner laid down in the Evidence Act, 1851, s. 13, and the Prevention of Crimes Act, 1871, s. 18, *i.e.*, by proof of identity and by production of a record or extract of such conviction?

2. (*a*) So far as identity is concerned, can this be proved if defendant is (i) neither present nor represented; (ii) not present but represented? (*b*) Is it sufficient proof if a police officer swears that he was present at that or some other court where the defendant was convicted for the alleged offence?

3. In certain magistrates' courts in which I appear, mostly in motoring cases, I have known the police, in reply to the chairman's question whether anything is known against the defendant, to read off from a card details of alleged previous convictions, although the card was nothing more than a police document. I have known this happen in a case where defendant was neither present nor represented. In any event this seems to me to be wrong, but in cases where I have been appearing I have refrained from raising any objection where I have known the alleged previous convictions to be correct.

Your comments generally would be appreciated. J.C.

Answer.

1. We think that if the prosecution have information of previous convictions from proper official records they are entitled to mention them. We are dealing here only with the position *after* conviction for a new offence, and *not* when the proof of the previous conviction is a necessary part of the prosecution's case in proving the new offence. If the previous convictions are disputed by the defendant the court must ignore them unless they are strictly proved, but we do not think that the prosecution are required, until the matter is disputed, to ensure by inquiries that the necessary witness to identity is available and to procure the necessary records from the appropriate courts.

2. (*a*) (i) Yes, if a witness is available who has seen the defendant in the new case and can identify him as being the person to whom the document recording the previous conviction relates; (*b*) We think, when strict proof is required, that to establish with certainty the offence for which the defendant was previously convicted a proper record from the convicting court should be produced.

3. We know that this practice exists. It must be accepted that where the defendant is neither present nor represented there are objections to it; but it must also be acknowledged that it is most undesirable that by not attending personally and (in suitable cases) by refraining from instructing his solicitor on the matter a defendant with previous convictions can make it either very difficult or else impossible for the prosecution to inform the court on these very relevant matters.

Our general comment is that in our view it is a matter which should be dealt with by new legislation. Means could and should be devised for making it possible, after due notice to a defendant of what is to be alleged, to inform a court from official records of the previous convictions of a defendant who, having had notice as above, does not choose to appear to dispute them. In a case where a greater maximum penalty is operative because of a previous conviction it may be necessary to give power to compel the personal appearance of a defendant so that the previous conviction may be strictly proved.

10.—Public Health Act, 1936—*Building byelaws—Domestic or Warehouse Building—Planning control.*

Plans have been deposited with this council for a building twenty-five by nineteen feet on plan, ten feet high to the ridge and seven feet six inches to the eaves, to be constructed of timber studding covered with matchboarding and lined with plasterboard. It is to be sited in a yard at the rear of the offices of another authority, and is to be used only for the garaging of that council's refuse collection lorry and a general repairs van. Should the building be treated as a domestic one, or does it fall within the warehouse class, the point being material in deciding

how near to the boundary of the property it can be erected and the construction of the walls. Is such a building exempt from planning control? ARCH.

Answer.

Assuming the local definitions to be in the usual form, the building is domestic. It does not appear to be exempt from planning control.

11.—Real Property—*Covenant to maintain building—Clearance order—Demolition order—Ground rent.*

In 1938 the council made a clearance order under s. 26 of the Housing Act, 1936, in respect of certain dwelling-houses, and the order was confirmed by the Minister. The houses were not demolished however until 1948, due to the intervention of the 1939/45 war. The lessee has offered the land to the council and states that since the order was made the lessor has not claimed the ground rent to which he is entitled. It appears that s. 26 (5) of the Act would operate to make of no effect a covenant in the lease to maintain at all times one or more dwelling-houses on the site, unless the local authority agrees to the land being used for building purposes, or otherwise developed, subject to such restrictions and conditions, if any, as the local authority may think fit to impose.

Your opinion is sought on the following points:

1. Am I right in assuming that a covenant to maintain at all time a dwelling-house or dwelling-houses on the site is unenforceable in the case of property demolished under a clearance order?
2. Would the same position arise under a demolition order?
3. The council has no immediate use for the land and would be unlikely to seek compulsory powers of acquisition, but it would eventually be of use in the redevelopment of the district under town planning provisions. The acquisition of the freehold rights would be the council's aim, and you are asked to advise

(a) under what powers should the land be acquired;

(b) as the ground rent has not been claimed from the present lessee since the order was made, could a claim within limits be made on (i) the lessee before the sale, or (ii) the council at the sale, in respect of such unpaid ground rent or portion thereof. AWN.

Answer.

1. Yes, because the basis of the clearance order is that the land must be cleared and may not be used again without a decision under s. 26 (5).
2. No: demolition of the unfit house does not preclude erection of a new house.
3. (a) On the facts given, the most appropriate power seems to be in s. 40 of the Town and Country Planning Act, 1947.

(b) No; *see* the definition of "land" in s. 31 of the Limitation Act, 1939.

12.—Road Traffic Acts—*Abnormal indivisible load—Conditions of the Authorization of Special Types Order not complied with—Offences.*

I should be grateful for your valued opinion on the following matter, in connexion with a case which recently occurred within this police district.

Where a heavy motor-car specially constructed for, and carrying an abnormal indivisible load is being used on a road, and the maximum permitted weight under reg. 64 of the Motor Vehicles (Construction and Use) Regulations, 1947, is exceeded, is the vehicle considered an "authorized" vehicle under article 11 (2) of the Motor Vehicles (Authorization of Special Types) General Order, 1941, even though certain specified conditions are not complied with, *i.e.*, (1) where the overall width of the load exceeds nine feet and only two persons inclusive of the driver are in attendance (and not three persons as required by the order), and (2) where proper notice in the prescribed form has not been served on the chief officer of police of the area through which the vehicle passes, and (3) where similar notice has not been served on every highway and every bridge authority responsible for maintenance and repair of any road or bridge over which the vehicle passes?

In other words, if any one or more of the conditions specified in the order are not complied with, does the vehicle automatically become "unauthorized"?

If such a vehicle is not an "authorized" vehicle, should proceedings be taken under regs. 64 and 94 of the Motor Vehicles (Construction and Use) Regulations, 1947, invoking reg. 94 for the penalty, made under s. 30 of the Road Traffic Act, 1930?

If the vehicle is an "authorized" vehicle, it is presumed that proceedings in the circumstances described, could be taken under articles 6, 7 and 8 of the order, in conjunction with s. 3 and s. 113 (2) of the Road Traffic Act, 1930. In this case, however, are three distinct offences created? JPS.

Answer.

We think that as the vehicle is specially designed and constructed for use in connexion with the conveyance of abnormal indivisible loads the provision of the 1941 order apply and that failure to comply with the special requirements of that order should be dealt with as a breach of the Order and therefore of s. 3 (3) of the 1930 Act.

We think on the facts given in the question that three offences have been committed.

13.—Road Traffic Acts—*Special reasons—Careless driving—No endorsement because of "the prevailing weather conditions."*

At the recent hearing of a summons for driving a motor vehicle without due care and attention, contrary to s. 12 of the Road Traffic Act, 1930, after the case had been found proved, the magistrates found a "special reason" and ordered that the defendant's driving licence should not be endorsed. This was in pursuance of the provision in the Road Traffic Act, 1934, s. 5 (1) and the special reason in this case was given as "the prevailing weather conditions."

The defendant said his windscreen wiper was working but only left him a small arc of glass for his view. This fact, influencing as it did the defendant's driving, was, in my opinion, one of the circumstances in which the offence took place. When the magistrates found that the offence had taken place in those circumstances, *a fortiori* if the defendant pleaded guilty, consideration had been duly given to the fact.

To single out that fact as a "special reason" would appear to have been giving double value and consideration to the same fact.

Reported cases on the construction of the expression "special reasons" in the Road Traffic Acts have not dealt with this section. Under other sections the "special reason" is usually the finding of a fact which was outside the facts constituting the offence. Here the facts mentioned were part of the facts forming the circumstances of the offence. Was the finding of the magistrates correct in law? J. SCEG.

Answer.

The accepted test is that the reason shall be one special to the facts of the particular case. Facts common to a great many cases and circumstances peculiar to the offender are not special reasons.

The prevailing weather conditions must have affected all drivers in the particular area at the material time and they called for additional care and attention while they lasted. The defendant could, for instance, have stopped from time to time and got out to clear his windscreen so that his vision was not unduly impeded. We do not think that there was a special reason within the Act and the decisions.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*)

LONDON COUNTY COUNCIL

APPLICATIONS are invited from admitted solicitors for permanent and temporary appointments. The commencing basic salaries are: For solicitors admitted under one year £600; one year but less than two £625; for two years or more £650. The salary scale rises by annual increments of £25 to £700 a year.

An addition is made to all salary figures quoted above of ten *per cent.* on the first £600 and seven and a half *per cent.* on the remainder. The appointments will be subject to the Council's Superannuation Scheme. A candidate engaged in a temporary capacity will be eligible to apply for any subsequent vacancy for a permanent solicitor assistant.

Application forms (with full particulars) obtainable by sending stamped addressed envelope marked "Solicitor Assistant" to the Solicitor and Parliamentary Officer, County Hall, Westminster Bridge, London, S.E.1. Completed applications to be returned by September 8, 1951.

Canvassing disqualifies. (1001).

COUNTY OF MIDDLESEX

BRENTFORD PETTY SESSIONAL DIVISION

WHOLE-TIME Assistant to Clerk to Justices, experienced in keeping Magisterial accounts, issuing of process, and general duties of Clerk to the Court. Remuneration on scale £420 × £25 —£520 × £30—£550. Qualifications and experience will determine commencing salary. Pensionable, subject to medical fitness. Applications, with copies of not more than three recent testimonials, must reach the undersigned by September 14, 1951 (quoting J. 670 J.P.). Canvassing disqualifies.

C. W. RADCLIFFE,
Clerk to the Standing Joint Committee.

Guildhall,
Westminster, S.W.1.

COUNTY BOROUGH OF WIGAN

Junior Assistant Solicitor

APPLICATIONS are invited for the appointment of Junior Assistant Solicitor at a salary in accordance with the National Joint Council Scale as follows: (a) After admission and on first appointment within A.P.T. Division, Grade Va (£600—£660 per annum), (b) After two years' legal experience from date of admission within A.P.T. Division Grade VII (£685—£760 per annum).

Local Government experience is desirable but not essential.

Applications, with copies of two recent testimonials, must be received by me not later than August 25, 1951.

ALLAN ROYLE,
Town Clerk.

Municipal Buildings,
Library Street,
Wigan.
August 7, 1951.

Printed by R. J. Acford Ltd., Terminus Road, Chichester, Sussex, and published each Saturday by the Proprietors, Justice of the Peace Ltd., at the Office of the " Justice of the Peace and Local Government Review," Little London, Chichester, Sussex, England. Registered at the G.P.O. as a newspaper. Saturday, August 11, 1951. Price 2s. 3d. with Reports, post free 2s. 5d.; without Reports 1s. 3d., post free 1s. 5d. Subscription rates: £6 per annum with Reports; £3 10s. per annum without Reports.